109-221

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 997.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, APPELLANT,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND THE NEW ORLEANS, MOBILE, AND TEXAS RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 1, 1883.

writ issued without any affidavit would be just as good in the hands of the marshal as a writ properly issued when he is enforcing it against third parties.

O. M. BARNES,
Attorney for Defendant in Error.

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[a] CIRCUIT COURT OF THE UNITED STATES, FIFTH CIRCUIT, EASTERN DISTRICT OF LOUISIANA.

Transcript of appeal in the case of the Board of Liquidation *vs.* The Louisville and Nashville Railroad Company *et al.*, No. 10180, returnable to the Supreme Court of the United States on the second Monday of October, 1883.

Miller & Finney, Solicitors for Complainants.

Bayne & Denegre, Solicitors for the Louisville and Nashville Railroad Company.

C. F. Buck, City Attorney, Solicitor for the City of New Orleans.

1 State of Louisiana, Parish of Orleans. Civil District Court for the Parish of Orleans.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO. *et al.* } No. 7229.

Petition Filed December 8, 1882.

To the Honorable the Civil District Court for the Parish of Orleans.

The petition of the Board of Liquidation of the city debt, a corporation created by the act of the Legislature of Louisiana, No. 133, of 1880, with the powers and duties stated in that act, domiciled in New Orleans, respectfully shows: That on the 20th September, 1820, an act of compromise and donation was passed between the city of New Orleans and the part or riparian proprietors claiming rights in the batture or alluvions then existing
2 along said river front from the lower line of the property of William W. Montgomery to the boundary line between the city and said fauborg, that by the terms of that compromise, a certain portion of that batture, to wit: all between the new levee then existing on the whole extent of said batture, and the marginal line of the river, when the waters were at the lowest stage, including the land of Tchoupitoulas street then laid out, and the land on which the new levee was constructed, was donated to said city, so far as any right or interest therein of said proprietors, enabled them to make said donation, the city upon its part coming under certain obligations accompanied with the stipulations that the land should be inalienable not subject to the debt of the city, and that the public should have certain rights with respect to said lands, all of which more fully appears by reference to said act passed before H. Lavergne, notary, on said date, and copy of said act is herewith filed as part hereof. That on the 20th
3 June 1851, another compromise was made between the city

of New Orleans and the then riparian proprietors, by which, in view of the increase of said alluvion or batture between the line of the new levee of 1820—which, in 1851, had become New Levee street—and the river, it was agreed that three streets, to wit, Fulton, Front, and Delta streets, should be opened and laid out through said batture; that the squares or islets between the said streets should be sold and the proceeds divided between the city and the said part proprietors, in the proportions of one-third to the city, to be applied to the debts of the old city—*i. e.*, to the several sinking fund—one-third to the then Second Municipality, and one-third to the said proprietors. And it was further stipulated and agreed all that portion of said batture between Delta street and the Mississippi river, above Lafayette street, to the line of Montgomery property, and all that portion of the batture between Front street and the river Mississippi, from La-
4 fayette street down to Canal street, shall be and was thereby vested in perpetuity and full ownership in the said municipality number two, in favor of whom said proprietors ceded and forever relinquished all their claims in and to said batture, as well as to all and every enlargement thereof or addition thereto, by new formations; all of which more fully appears by the said act of compromise, passed before H. B. Cenas, notary, of date the 20 June, 1851, and by the plan marked "A," showing the extent and location of the land thus ceded to the said Second Municipality, which, with copy of said act, are herewith filed and made part hereof. That the stipulation of said compromise of 1851 were all carried into effect, and ever since the title to sell said batture between Delta street and the river above Lafayette street, and between Front street and the river, from Lafayette street down to Canal street, has been deemed to have been acquired by the city, succeeding to the title of the Second Municipality, by the title of ownership, that ac-
5 cordingly the city has laid out streets through said batture, dividing it into squares, from time to time has sold portions thereof, and has always been recognized as owner of all that space of said batture not sold.

That, by certain acts of the Legislature of Louisiana, passed in 1869 and 1870, that body undertook to grant to the New Orleans, Mobile and Chattanooga Railroad Company, the right to locate, construct, and maintain a passenger depot, with offices and apartments suitable for the business of said road, upon that portion of said batture acquired by the city under said compromise of 1851, bounded by Canal, Delta, Poydras streets, and a line parallel to, and one hundred and fifty feet easterly from Delta street, and said acts further professed to part to said company for the construction of a freight depot, and for other purposes of its business, the right to occupy and enclose the blocks of ground, parts of streets, and portions of the land embraced within said

6 batture belonging to the city, and acquired by said compromise, bounded by Girod, Water, Calliope, and a line parallel to, and two hundred and ninety feet easterly, from Water street, with the provision that the company should not enclose and occupy any part of the said blocks owned by individuals, until the company has acquired title thereto, but the wholesale appropriation of the property of the city, attempted by these legislative acts, is accompanied with no qualification as restriction, and by the supplemental the Legislature undertook to consummate its attempted appropriations of the property of the city, by the enactment declaring the municipal authorities incapable of passing any ordinance, or in any way obstructing the enjoyment by said company, of the advantages proposed to be conferred by said acts, all of which more fully appears by reference to said acts, No. 26 of 1869, and No. 31 of 1870; Sess. Acts of 1869, No. 28, and Session Acts 1870, Nos. 55, 58 and 59, specially referred to for fuller explanation and greater certainty.

7 That said Legislature acts in their scope and purpose, propose to divest the city of New Orleans of its property, held by the city, in its proprietary and private character, and to confer that property upon the railroad company named in said acts; that it was wholly incompetent for the Legislature thus to donate the property of this city; that the title of the city to said property stood protected from all such legislation as that announced in said acts; that the acts palpably and grossly transcended the legislative competency, were and are forbidden by the 110th article of the State constitution of 1868, the corresponding article, No. 155, of the State constitution of 1880, the article 1st, section 10, and article fourteen, section 1st, of the Constitution of the United States, with which and each of said provisions said legislative acts are in plain antagonism, and are void and of no effect.

That said acts were always resisted by said city as invasions of its rights, that its title to said batture lots and squares attempted to be disposed of by said acts, clear and disreputable under the said compromises, had been, in fact, recognized by the railroad company, by its purchases from the city of some squares and lots lying within the limits of the property proposed to be donated by said acts, that other parties at and about the time of the passage of said acts were negotiating with the city for the purchase of some of the squares in said attempted part, but by said legislative acts it was proposed to wrest from the city, the large and valuable property described in the acts, and confer it upon the company as a donation, at the expense of the rights of the city, and to the prejudice of its creditors, who would be largely benefited by the large amounts, susceptible of being derived from the sales of said batture squares. That there were two suits brought in the State courts

8

to maintain the pretensions of said railroad company, based on said legislative acts, that the judgments in said suits taken
9 together, and they were rendered at the same time, and are to construed together in their effects, as petitioners charge, maintain the title of the city to the property embraced in said legislative acts, and declare invalid the attempted grants of said batture property contained in said acts, said decisions were rendered in the suits 3692 and 3701 of the docket of the Supreme Court, and are specially referred to for fuller explanation and greater certainty. That subsequent to said decisions, the city acting upon its interpretation of their effect, proceeded to remove the building which the company had placed upon the property of the city embraced in said acts, thereupon the company enjoined again setting up said acts and claiming rights thereunder, and this fresh injunction suit, brought by the company in the State courts, was by the company removed to the United States circuit court, whose decision was in favor of the company, but an appeal from that decision was taken by the city to the United
10 States Supreme Court, as more fully appears by reference to said injunction suit No. 2609 of the late supreme district court for the parish of Orleans, and No. 7912 of the docket of the United States circuit court specially referred to, and the record of appeal to the United States Supreme Court is No. 17 of the docket, and to which reference is also made. That with this appeal pending involving said property of the city, the city undertook to enter into a compromise with said railroad company, that is, with its successors, the Louisville and Nashville Railroad Company, by which it was prepared to settle all matters in controversy in said appeal, to confirm to said company all said property the subject of said legislative acts, and to dismiss said appeal, which would have made final said judgment of the United States circuit court, as appears by said act of compromise passed before Samuel Flower, N. P., of date the — October, 1882,
11 and the ordinance No. 8079, administration series, copies whereof is herewith filed for reference and greater certainty.

That the value of the said batture proposed to be confirmed to said railroad company by said compromise, excluding the property within the limits of the attempted donation contained in the said acts, which the company and others had bought and paid for, is largely in excess of five hundred thousand dollars, a particular estimate of said value by competent judges, as herewith filed as part hereof, and the sum stipulated to be paid by the company for the confirmation to it of the large and valuable property is forty thousand dollars, which the city undertook to receive from said company in conformity with the terms of said so-called compromise, as appears by the aforesaid copy herewith filed. That by the act of the Legislature of Louisiana, number

133, of 1880, petitioner is constituted a board of liquidation of the city debts, clothed with the authority to apply all the property of the city not dedicated to public use to the liquidation of the
12 bonded debt, which is now upwards of thirteen millions of dollars; that all said property is directed by said act to be turned over and transferred to petitioner, solely vested with the power of sale thereof, for the purpose of applying the proceeds to the reduction and retirement of said bonded debt; that the powers of the board are respected in the legislature of 1882. Act No. 58, and prior to the act of 1880 the act No. 31 of 1876, had pledged all city property susceptible of sale to the satisfaction of the bonded or floating debt, and by late legislature, the floating debt being excluded, the deduction to the bonded debt became exclusive, and thus the city authorities were stopped of all power of disposition over said party, except to hand it over to petitioners for the trust stated in said act of 1880. That in 1869 and 1870, and long prior thereto, the city had extended streets through a large portion of said batture embraced in said
13 attempted grants to the railroad company, and had laid off the same in squares and lots for sale, for account and benefit of said city, as the owner thereof; that said portion alone never sold by the city, but divided into squares for sale, was and is now in excess of the value of three hundred thousand dollars, had long ceased to be dedicated to public use, or to the batture in the ordinary sense of the term, because divided into squares, and was all conveyed to petitioner by said act of 1880, for the purpose therein expressed, that the portion of said batture embraced in said acts of 1869 and 1870, not divided into squares and lots, is of very great value, all thereof not dedicated to public use, as that may cause hereafter to be so dedicated is conveyed to petitioner by said act of 1880, for said trust thereby recognized, and said plan is referred to as showing the extent of said batture and the portion thereof divided into lots and squares, acquired by petitioner for the purpose of said act.

14 That the said compromise if carried into effect, would sacrifice property of great value, for the aforesaid pecuniary consideration stated in said compromise, utterly and grossly disproportioned to the actual value, will deprive the bonded creditors of large resources to liquidate said indebtedness which the sale of said property would furnish, and will work very serious injury to the public interests, that the said compromise was entered into without the knowledge or consent of petitioner, in violation of the law, the rights of petitioner, and of the trust created by said act of 1880, that in the form of a compromise in effect, it proposed to confirm to said company, for said pecuniary consideration, property of great value, not dedicated to public use, conveyed to petitioner, of which the city had no power or disposition, but the said power was solely and exclusively vested

in petitioner; that the said action of the city, in the premises was ultra vires, and void, and said compromise is null and of
15 no effect; that the said act of 1880, was noticed to all of title of petitioner to said property for the purposes of the trust aforesaid, with which the property was and is charged, and said company has acquired no right thereto, but notwithstanding claims to be entitled to hold and possess said property under said compromise, and to be entitled to dismiss the said appeal and thereby make final said judgment of the United States circuit court. That petitioner succeeding to the title to said property, involved in said appeal, is entitled to maintain and prosecute said said appeal, and to resist any dismissal thereof, to the end that the judgment of said circuit court may be reversed and said property sold and the proceeds applied to the payment of the bonded debts; that petitioner is entitled upon the grounds herein stated to have said compromise annulled and set aside. That in the Supreme Court of the United States, this petitioner opposed the dismissal of the appeal of said city, in said suit of the City *vs.* The New Orleans, Mobile and Texas Railroad Company by which
16 it was proposed to make final said judgment appealed from, and said compromise; and said dismissal was stayed and suspended to enable petitioner to prosecute this action for the establishment of its rights, as appears by the order of the Supreme Court herewith filed as part hereof. That the name of said corporation to whom said attempted grants were made, was changed to that of the New Orleans, Mobile, and Texas Railroad Company, and the Louisville and Nashville Railroad Company, a corporation established by law, has succeeded to both said corporations is name in said compromise, and claims to hold said property by reason of said compromise. Wherefore petitioner prays that the said Louisville and Nashville Railroad Company and the city of New Orleans be duly cited to answer this petition, that, after due proceedings, petitioner have judgment in its favor; that said agreement of compromise, of date the 13th October, 1882, passed before Samuel Flower, notary, between
17 said Louisville and Nashville Railroad Company and said city be decreed to be null and void in so far as it proposes to confirm to said company any right or title whatever to the said property embraced in said legislative acts No. twenty-six, 1869, and No. thirty-one of 1870, and in so far as said agreement proposed to acquiesce in and dismiss the appeal taken by said city, in the aforesaid suit of The City *vs.* The New Orleans, Mobile, and Texas Railroad Company, and that it be deemed said appeal is still subsisting notwithstanding said agreement, and that the petitioner has the right to prosecute the same for the reversal of said judgment in so far as said judgment decrees said property to said company or maintain said legislative acts of 1869 and 1870, as grants of said property to said company, or

in any manner operates upon or affects said property, prejudicial to the right of petitioner, and for general relief.

(Signed) MILLER, FINNEY & MILLER,
Attorneys for Petitioner.

18 *Document Filed with Petition, December 8th, 1882.*

Supreme Court of the United States. No. 17. October Term, 1882.

THE CITY OF NEW ORLEANS, Appellant, *vs.* THE NEW ORLEANS, MOBILE, AND TEXAS RAILROAD COMPANY.

On motion, Mr. Chief Justice Waite delivered the opinion of the Court.

This case was continued, at the request of the parties, on the 10th of October. The appellee now presents a stipulation for the dismissal of the appeal, signed by the city attorney of New Orleans, pursuant to the terms of a compromise of the matter in dispute made with the city council, and asks to have the appropriate order entered upon that stipulation. The Board of Liquidation of the city debt of New Orleans comes to resist the entry of any such order, on the ground that during the pendency of the appeal in this court, authority over the subject-matter of the controversy has been transferred from the
19 city council to that board, and that the compromise which has been effected is not binding. The board also asks permission to prosecute the appeal in the name of the city.

It is conceded that the city council made the compromise which is claimed, and that the appellee is entitled to a dismissal of the appeal, if the council had authority to do what it has done, and the compromise was fairly made. The dispute as to the authority of the council presents questions too important to be settled summarily in these motions. It is therefore ordered that the cause and pending motions be continued until the next term, and that the appeal be then dismissed, in accordance with the stipulation on file, unless the Board of Liquidation begin and prosecute, without unnecessary delay, in some court of competent jurisdiction, an appropriate proceeding to set aside the compromise which has been made with the city council.

True copy.

Test: (Signed) JAS. H. McKENNEY,
Clerk Sup. Court U. S.

20 *Document Filed with Petition. Filed December 8th, 1882.*

(In red ink:) Marked "D. E." Offered in evidence June 6, 1883, by complainant. (See note of evidence, p. 238.)

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-two, before me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared—

The Honorable Joseph A. Shakspeare, mayor of the city of New Orleans, herein acting in such capacity under and by virtue of the authority in him vested by Ordinance No. 8079, administration series, adopted by the council of the city of New Orleans, at a meeting held on this eleventh day of October, A. D. 1882, a duly certified copy of which is annexed to this act and incorporated as part hereof, who declared
21 that he acknowledges to have received from Thomas L. Bayne, Esq., attorney for the Louisville and Nashville Railroad Company, and for it and the New Orleans, Mobile and Texas Railroad Company, reorganized, the sum of forty thousand dollars, and for and in consideration of said sum the city of New Orleans does, by these presents, compromise and settle all of the matters in controversy, and the suit of the city of New Orleans *versus* The New Orleans, Mobile and Texas Railroad Company, now pending in the Supreme Court of the United States, in appeal by the city of New Orleans from the judgment of the circuit court of the United States, rendered on the eleventh day of June, 1878, affirming the judgments of the supreme court of Louisiana and of the eighth district court for the Parish of Orleans, in favor of said railroad company, dismissing the appeal, acquiescing in the judgments rendered in favor of said company, and confirming and securing to the New Orleans, Mobile
22 and Texas Railroad Company, reorganized, and the Louisville and Nashville Railroad Company the right, grant, occupancy, and privileges heretofore granted by the city of New Orleans, and grants made and confirmation of the same by the State of Louisiana, by acts of the Legislature No. 28 of 1868, Nos. 26 and 67 of 1869, and No. 31 of 1870, all as set forth in the propositions recited in the preamble to the above-mentioned and annexed ordinance No. 8079, A. S., and in said ordinance, hereby making full compromise and settlement, and granting and confirming all the rights and privileges therein described; and also personally came and appeared herein the said Thomas L. Bayne, attorney of and for said railroad company, and in the name and on behalf of said companies accept the same.

Thus done and passed at the city of New Orleans, in the presence of E. L. Bower and A. E. McConnell, competent
23 witnesses, residing in said city, who hereunto subscribe

their names, together with the said appearers, and me, notary, the day, month, and year first above written.

Original (signed) Jos. A. Shakespeare, mayor, Thomas L. Bayne, E. L. Bower, A. E. McConnell, Samuel Flower, notary public.

I certify the foregoing to be a true copy of the original on file in my office.

(Signed) SAMUEL FLOWER,
Notary Public.

Citation.

State of Louisiana, Civil District Court for the Parish of Orleans, in the city of New Orleans.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY *et al.* } No. 7229.

To the Louisville and Nashville Railroad Company, through its proper officer, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within
24 ten days after the service hereof.

Witness the Honorable A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 14th day of December, in the year of our Lord, 1882.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Return to above citation. Filed December 22d, 1882.

Received December 14th, 1882, and on the 21st day of December, 1882, I served a copy of the within citation and accompanying petition on the Louisville and Nashville Railroad Company, defendants herein, through J. T. Harahan, its superintendent, in person, at the office of defendants, on the levee at the foot of Girod street, the president and other officers being absent from the office of defendants at time of said service.

(Signed) JNO. E. SILKFORT,
Deputy Sheriff.

Citation.

25 State of Louisiana, Civil District Court for the Parish of Orleans, in the city of New Orleans.

THE BOARD OF LIQUIDATION
versus
THE LOUISVILLE AND NASHVILLE RAILROAD CO. *et al.* } No. 7229.

To the City of New Orleans through its proper officer, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service hereof.

Witness the Honorable A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 14th day of December, in the year of our Lord 1882.

(Signed.) JNO. D. RANKIN,
Deputy Clerk.

Return to above Citation. Filed December 16th, 1882.

Received Dec. 14th, 1882, and on the 15th day of December, 1882, I served a copy of the within citation and accompanying petition on the City of New Orleans, defend-
26 ant herein, through W. J. Behan, its mayor, in person. Ret. same day.

(Signed.) JNO. E. SILKFORT,
D'y Sheriff.

Supplemental Petition. Filed December 13th, 1882.

BOARD OF LIQUIDATION OF THE CITY DEBT
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO. } No. ——
Civil District Court.

To the Honorable the Judges of the Civil District Court in and for the Parish of Orleans:

This supplemental and amended petition of the Board of Liquidation of the City Debt, filed with, leave of the court, respectfully shows that the grants stated in the original petition herein, were made to the New Orleans, Mobile and Chattanooga Railroad Company; that said company has since changed its name to the New Orleans, Mobile and Texas Railroad Company; that the act purporting to be a compromise, set forth in the original petition, purports to have been made with, and said grants are stip-
27 ulated in said act to be confirmed to, both said New Orleans, Mobile and Texas Railroad Company, and the Louisville and Nashville Railroad Company.

Petitioner further shows that said New Orleans, Mobile and Texas Railroad Company is a corporation organized under the laws of the State of Alabama, as well as this State, and said Louisville and Nashville Railroad Company is a corporation organized under the laws of the State of Kentucky, does business in this State, and both of said corporations have a domicil in this city.

Petitioner further shows that said New Orleans, Mobile and Texas Railroad Company has, therefore, an interest in this suit, and is a necessary party to this suit, and the interest of the other corporation appears from the fact that it is mentioned in said act.

Wherefore petitioner prays that said New Orleans, Mobile and Texas Railroad Company be cited to answer this and the original petition herein, that the city of New Orleans and the
28 Louisville and Nashville Railroad Company be served with a copy of this petition, and that in due course of proceedings your petitioner have the relief prayed for in its original petition.

(Signed) MILLER, FINNEY & MILLER,
Attorneys for Petitioner.

Order.

Let this supplemental and amended petition be filed and served as herein prayed for.

New Orleans, December 14th, 1882.

(Signed) A. L. TISSOT, *Judge.*

Citation.

State of Louisiana, Civil District Court for the Parish of Orleans, in the city of New Orleans.

THE BOARD OF LIQUIDATION
versus
THE LOUISVILLE AND NASHVILLE RAILROAD CO. *et al.* } No. 7229.

To the New Orleans, Mobile and Texas Railroad Company, through its proper officers, New Orleans:

You are hereby summoned to comply with the demand contained in the original and supplemental and amended petition of which a copy accompanies this citation, or deliver your
29 answer to the same in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service hereof.

Witness, the Honorable A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazurus, judges of the said court, this 15th day of December in the year of our Lord 1882.

(Signed) JAS. D. RANKIN, *Deputy Clerk.*

Return to above Citation. Filed December 22d, 1882.

Received December 15th, 1882, and on the 21st day of December, 1882, I served a copy of the within citation and accompanying original and supplemental and amended petition on the New Orleans, Mobile and Texas Railroad Company, defendant herein, through J. T. Harahan, its superintendent, in person, at the office of defendant, on the levee, at the foot of Girod street, the president and other officers being absent from the office of defendant at time of said service. Ret. same day.

(Signed) JNO. E. SILKFORT,
D'y Sheriff.

30 Civil District Court, Parish of Orleans.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO. *et als.* } No. 7229.

Exception. Filed January 3d, 1883.

The Louisville and Nashville Railroad Company, a body corporate under the laws of Kentucky, and a citizen of that State, and the New Orleans, Mobile, and Texas Railroad Company, a body corporate under the laws of Alabama, and a citizen of that State, and they do aver made defendant herein appear and except.

That the Board of Liquidation is not a corporation, capable of holding property, as claimed herein, and is not independent of and separate from the city of New Orleans as a political organization, under the control of the Legislature of the State of Louisiana, and that said Board has no capacity to assert and maintain such rights as are claimed herein independent of and
31 adverse to the authority and power of the city of New Orleans and of the State of Louisiana, as exercised by the said city of New Orleans, in ordinance No. 8079 and the agreement signed by the mayor of the city of New Orleans, on the 11th day of October, 1882, and the acts of the Legislature of Louisiana No. —— of 1868, No. 26 of 1869, and No. 31 of 1870, No. 20 and 81 of 1882.

If this exception is overruled then these defendants further except to all of the matters and things embraced in the petition filed by plaintiff and set up therein, except in so far as the same conforms to the authorization granted by the Supreme Court of the United States in writ No. 17 of the docket of said Court, under the application made by plaintiff to that Court, and the order therein as follows:

"The City of New Orleans *vs.* The New Orleans, Mobile, and Texas Railroad Company, No. 17." The Board of Liquidation

of the city debt, a corporation duly organized under the laws of the State of Louisiana, by leave of the court first had and obtained, moves the court for an order allowing said Board to prosecute the appeal in said above-entitled cause in the
32 name and stead of said appellant. * A copy of said motion is annexed hereto, and also a copy of the order made. * * *

It is, therefore, ordered that the cause and pending motions be continued until the next term and that the appeal be then dismissed in accordance with the stipulations on file, unless the Board of Liquidation begins and prosecutes without unnecessary delay in some court of competent jurisdiction an appropriate proceeding to set aside the compromise which has been made with the city council, on the ground that all said matters are now pending before the Supreme Court of the United States in the above-named cause, except as stated in said order under which this proceeding is limited to the inquiry and determination whether or not the plaintiffs were the only competent parties for the defendants, and appellees to deal with relative to the dismissal of the appeal which had been taken by the city of New Orleans from the judgment of the circuit court of the United States on the —— day of June, 1878, which judgment is as follows:

New Orleans, Mobile, and Texas Railroad Company *vs.*
33 The city of New Orleans, No. 7962. Decree entered and filed June 11th, 1878.

This cause came on to be heard on the pleadings, proceedings, and orders in the cause, and was argued by counsel for all of the parties.

The court, after consideration of the premises, declares and decrees that the judgment rendered by the eighth district court of the parish of Orleans, in the suit No. nineteen, in that court, between these same parties, the 19th day of December, 1871, and which judgment was affirmed by the supreme court of this State the 4th day of May, 1874, upon appeal made by defendant in this suit, has the authority of res judicata between them, the subject-matter of the two suits being the same, and the object identical, and the wrongs committed by defendant, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribune.

The court orders and decrees that the injunction granted in this suit by the superior district court before its removal to this court be perpetuated, and the defendants be enjoined and restrained from disturbing the plaintiff, their agents, ser-
34 vants, and assigns, in the occupation, use, and employment of their railroad, tracks, depots, and other appurtenances under their charter, which are in and along the streets, squares, spaces specified in the grants of the General Assembly

to the said corporation, and also in the order and decree of the said supreme court in the cause No. 3692 aforesaid, a transcript of which is on file, and that the defendants pay the costs of the suit.

The judgment, which *are* [is] affirmed by the supreme court of the State of Louisiana, as follows: * * *

"And it is still further ordered, adjudged, and decreed that upon the answer and demand in reconvention filed by the city of New Orleans, and upon the issue made thereon, there be judgment against the plaintiff in reconvention the city of New Orleans and in favor of defendants to said plea and demand, the New Orleans, Mobile, and Chattanooga Railroad Company; that the several acts of the General Assembly granting the New Orleans, Mobile, and Chattanooga Railroad Company the right to construct, maintain, and use its tracks, turn-outs, switches, depots, &c., along and upon the levee, streets, batture, in
35 front of New Orleans be maintained as constitutional and valid, and that the city of New Orleans be adjudged to have no right or title of private property in and to the batture property lying in front of the fauborg St. Mary, and that said property, especially those spaces of ground described in the grants to the plaintiff be decreed to be the property of the public whose destination can only be changed by legislative authority and which the city of New Orleans cannot alienate or encumber." The city of New Orleans having appealed from the judgment of the circuit court of the United States on the 11th day of June, 1878, and after the same had been continued over one term by consent, finally dismissed its appeal; and the present plaintiff, as heretofore stated, appeared to contest this dismissal on the ground heretofore stated; and the only question now involved, or which can be considered, is its right to resist this dismissal of appeal under the allegation or inquiry whether or not, during the pendency of the appeal in (the Supreme Court of the
36 United States) this court, authority over the subject-matter of the controversy has been transferred by the city council to that board, (Board of Liquidation,) and that the compromise which has been effected is not binding."

Wherefore defendants respectfully ask that the exceptions may be maintained, and the plaintiffs' suit may be dismissed at and for all equitable relief.

(Signed) BAYNE & DENEGRE,
Att'ys for D'f'ts.

Motion to fix exception. Filed January 5th, 1883.

BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO. *et al.* } Civil District Court.

On motion of Miller & Finney, attorneys for plaintiffs, it is ordered that the exceptions herein filed be fixed for trial on Friday, the 12th of January, 1883, at 11 o'clock a. m.

Notice of Trial.

State of Louisiana, Civil District Court for the Parish of Orleans, Division A.

BOARD OF LIQUIDATION
versus
LOUISVILLE AND NASHVILLE RAILROAD CO. *et al.* } No. 7229.

37 To Honorable W. J. Behan, mayor, attorney, and counsellor at law, New Orleans:

SIR: Please to take notice that the exceptions in this case has been fixed for trial on Friday, 12th day of January, 1883.

New Orleans, January 5th, 1883.

(Signed) H. MESSONNIER,
Deputy Clerk.

Return to above notice of trial. Filed January 10th, 1883.

Received January 5th, 1883, and on the 6th day of January, 1883, I served a copy of the within notice of trial on W. J. Behan, mayor of the city of New Orleans, defendant herein, in person.

Ret. same day.

(Signed) JNO. E. SILKFORT,
D'y Sheriff.

Notice of Trial.

State of Louisiana, Civil District Court for the Parish of Orleans, No. 7229, Division A.

To Messrs. Bayne and Denegre, attorney and counseller at law, New Orleans:

BOARD OF LIQUIDATION *vs.* LOUISVILLE AND NASHVILLE RAILROAD COMPANY ET AL.

SIR: Please to take notice that the exceptions in this
38 case has been fixed for trial on Friday, 12th day of January, 1883.

New Orleans, January 5th, 1883.

(Signed) H. MESSONNIER,
Deputy Clerk.

Return to above notice of trial. Filed January 10th, 1883.

Received January 5th, 1883, and on the 6th day of January, 1883, I served a copy of the within notice of trial on Bayne and Denegre, attorneys herein named, through Thomas L. Bayne, a member of said law firm, in person. Ret. same day.

(Signed) JNO. E. SILKFORT,
D'y Sheriff.

Petition for removal. Filed January 11th, 1883.

Civil District Court, Parish of Orleans.

The Board of Liquidation *vs.* The Louisville and Nashville R. R. Co., The New Orleans, Mobile and Texas R. R. Co., and the city of New Orleans, No. 7229.

To the Honorable the Civil District Court in and for the Parish of Orleans.

The petition of The Louisville and Nashville Railroad Company, a body corporate under the laws of the State of
39 Kentucky, and a citizen of that State, and the New Orleans and Mobile and Texas Railroad Company, reorganized, a body corporate under the laws of the State of Alabama, and a citizen of that State, respectfully pray for a removal of this suit to the circuit court of the United States, fifth circuit and eastern district of Louisiana, and show that the matter in dispute and controversy and the amount involved therein, in the above-entitled suit exceeds the sum or value of one thousand dollars exclusive of all costs. That the controversy in said suit is between citizens of different States, and that at the time of the commencement of this suit, and now, your petitioners aforesaid were and are respectively citizens of the State of Kentucky, that is the Louisville and Nashville R. R. Co. of Kentucky, and the New Orleans, Mobile and Texas Railroad Co., reorganized, of the State of Alabama, as heretofore stated herein. The city of New Orleans is a citizen of Louisiana, and plaintiff herein is a citizen of the State of Louisiana, and in said suit there is a con-
40 troversy which is wholly between citizens of different States, and which can be fully determined as between them, viz., a controversy between petitioners and the Board of Liquidation, the plaintiff. Your petitioners further show that the suit is one of a civil nature arising under the Constitution of the United States, that plaintiff alleges that the acts of the State of Louisiana, referred to in his petition, viz: Act No. — of 1869, and No. 31 of 1870, and the rights and privileges secured to your petitioner thereunder are unconstitutional, and violate Article One of Section Ten, and Article Fourteen of Section One, of the Constitution of the United States, and are null and void.

And your petitioners offer and file hereunto a bond with good and sufficient security for their entering in said circuit court of the United States, on the first day of its next session, a copy of the record of this suit and for paying all costs that may be awarded by said circuit court, if said court shall hold that
41 this suit was improperly or wrongfully removed thereto.

And he prays this honorable court to proceed no further herein, except to make the order of removal and to accept said bond, and to cause the record to be removed into said circuit court of the United States, fifth circuit, eastern district of Louisiana, and for all equitable and general relief.

(Signed) BAYNE & DENEGRE,
Att'ys for Petitioners.

Affidavit.

Alfred C. Bugshawe, being duly sworn, says that the presidents, vice presidents, and superintendent of the Louisville and Nashville Railroad Company, and of the New Orleans, Mobile and Texas Railroad Company, reorganized, are absent from the State of Louisiana, and that in their absence he represents said companies here; that the statements and allegations of and in the foregoing petition are true, as he verily believes.

(Signed) ALFRED C. BUGSHAWE.

Sworn to and subscribed before me, January 11, 1883.

(Signed) E. A. LUMINAIS,
D'y Cl'k.

42 *Bond for Removal. Filed January 11th*, 1883.

Civil District Court, Parish of Orleans.

BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY, ET AL. } No. 7229.

Know all men by these presents, that we, the New Orleans, Mobile and Texas Railroad Company, and the Louisville and Nashville Railroad Company, as principals, and Henry Denegre and Charles B. Bayne, as sureties, are held and firmly bound, in solido, jointly and severally, to the Board of Liquidation in the penal sum of one thousand dollars, the payment whereof, well and truly to be made, to the said Board of Liquidation, its successors, heirs, and assigns, we bind ourselves, our successors, heirs, representatives, and assigns, jointly, by these presents.

Yet, upon these conditions, the said New Orleans, Mo-
43 bile and Texas Railroad Company, and the Louisville and

Nashville Railroad Company, having petitioned the civil district court in and for the parish of Orleans, State of Louisiana, for the removal of a certain cause therein pending, wherein the Board of Liquidation is plaintiff and the New Orleans, Mobile, and Texas Railroad Company are defendants, to the circuit court of the United States in and for the fifth circuit, eastern district of Louisiana. Now, if the said New Orleans, Mobile and Texas Railroad Company and the Louisville and Nashville Railroad Company, your petitioners, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record of and in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise in full force and effect.

Witness our hands and seals, this 11th of January, 1883.

44 Signed, The Louisville and Nashville Railroad Company and the New Orleans, Mobile and Texas Railroad Company, reorganized.

Per THOS. L. BAYNE.
(Signed) HENRY DENEGRE.
" CHARLES B. BAYNE.

Order for Removal.

Let, as within prayed for, this cause be transferred and removed to the United States circuit court for the eastern district of Louisiana on the first Monday of its ensuing term, *i. e.*, the fourth Monday in April, 1883, on petitioner giving bond, conditioned as the law directs, in the sum of one thousand dollars.

New Orleans, January 11th, 1883.

(Signed) A. L. TISSOT, *Judge.*

Answer of City of New Orleans. Filed January 12th, 1883.

BOARD OF LIQUIDATION
vs.
THE CITY OF NEW ORLEANS *et als.* } No. ——

To the Honorable the Civil District Court for the Parish of Orleans:

And now appears the city of New Orleans, one of the
45 defendants herein, and for answer to plaintiff's petition, avers that the settlement or compromise with the L. and N. R. R. Co., as per ordinance 8079 A. S. annexed to plaintiff's petition, was made in good faith and in the belief that the authorities were acting within the lawful scope of their powers, and relative to a subject-matter in their control. This appearer,

however, is desirous that the question presented as to her authority in the premises, or any other questions presented by the pleadings should have full investigation, and she avers that the amount of forty thousand dollars ($40,000) paid by the L. and N. R. R Co. is held unused and unappropriated, on special deposit, subject to the determination of this suit, to abide the decision thereof, and to be returned to said company, co-defendants herein, if it should be held that the city council had not the authority to make and compromise, or if, for any cause, same should be decreed null and void. Wherefore respondent, neither admitting nor denying the pretensions of the Board of Liquidation,
46 plaintiff herein submits the question to this honorable court for determination, and prays such judgment [or] order in the premises as *the* her position as stakeholder, for the purpose of this suit may require, and made proper, and as in duty bound, etc.

(Signed) WYNNE ROGERS,
Asst. City Attorney.

(Signed) LAWRENCE O'DONNELL,
Asst. City Attorney.

Certificate.

State of Louisiana, Civil District Court for the Parish of Orleans.

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing thirty-nine pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed, testimony and evidence adduced upon the trial of the cause wherein the Board of Liquidation is plaintiff and the Louisville and Nashville Railroad Company et als. are defendants, instituted in this court, and now in the records thereof under the No. 7229.

47 In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said court at the city of New Orleans, on this ninth day of February, in the year of our Lord one thousand eight hundred and eighty-three, and in the one hundred and seventh year of the Independence of the United States of America.

[SEAL] (Signed) JAS. T. CLARK, *Clerk.*

48 *Proceedings in the U. S. Circuit Court.*

Bill of Complaint. Filed March 31st, 1883.

To the Honorable the Judges of the Circuit Court of the United States, for the fifth circuit and district of Louisiana:

The Board of Liquidation of the city debt, a corporation created by the act of the Legislature of Louisiana, number 133

of 1880, with the powers and duties created by said act, domiciled in New Orleans, in said State, where it performs its functions, and a citizen of the State of Louisiana, exhibits this bill of complaint against the Louisville and Nashville Railroad Company, a corporation created by the laws of Kentucky, domiciled in and carrying on its business in said State, as well as in this State, and a citizen of said State of Kentucky, and against the New Orleans, Mobile and Texas Railroad Company, a corporation created by the laws of Alabama, recognized as such by the laws of Louisiana and a citizen of Alabama, as well as of Louisiana, and against the city of New Orleans, a political corporation
49 for the government of the said city, created by the laws of Louisiana, and thereupon your orator complains, and says:

That the said Louisville and Nashville Railroad Company is a corporation created by the laws of Kentucky, and is a citizen of said State, that the said New Orleans, Mobile and [Texas] Railroad Company, is a corporation created by the laws of Alabama, and recognized as such by the laws of Louisiana, and as a citizen of the State of Alabama, as well as of Louisiana, that the city of New Orleans is a political corporation, created by the laws of Louisiana for the government of said city, and that your orator is a corporation created by the laws of Louisiana, and a citizen of Louisiana. Your orator, further complaining, shows that on the 20th of September, 1820, an act of compromise and donation was passed between the city of New Orleans, and the front of riparian proprietors claiming rights in the battures or alluvion existing or extending along said river front from the lower line of the property of William W. Montgomery, to the boundary line between the city and said faubourg, that by the
50 terms of that compromise, a certain portion of that batture, to wit, all between the new levee then existing on the whole extent of said batture and the marginal line of the river when the waters were at the lowest stage, including the land of Tchoupitoulas st., then laid out, and the land on which the new levee was constructed, was donated to said city, as far as any right or interest thereon of said proprietors enabled them to make said donation; the city upon its part coming under certain obligations, accompanied with the stipulations that the land should be inalienable, not subject to the debts of the city, and that the public should have certain rights with respect to said lands, all of which fully appears by reference to said act, passed before St. Lavergne, notary, on said date, and copy of said act is herewith filed as part hereof. That on the 20th June, 1851, another compromise was made between the city of New Orleans and the then riparian proprietors, by which in view of the increase of
51 said alluvions or batture between the line of the new levee of 1820, which in 1851 had become New Levee st., and the river, it was agreed that these streets, to wit, Fulton, Front,

and Delta streets, should be opened and laid out through said batture; that the squares or islets between the said streets should be sold; and the proceeds divided between the city and the said front proprietors in the proportion of one-third to the city, to be applied to the debts of the old city, *i. e.* to the several sinking fund; one-third to the then second municipality, and one-third to the said proprietors. And, it was further stipulated and agreed, all that portion of said batture between Delta st. and the Mississippi river, above Lafayette st., to the line of Montgomery's property, and all that portion of the batture between Front st. and the river Mississippi, from Lafayette street down to Canal st., shall be and was thereby vested in perpetuity and full ownership in the said municipality number two,
in favor of whom said proprietors ceded and forever
52 relinquished all their claims in and to said batture, as well as to all and every enlargement thereof or accessions thereto by new formation, all of which more fully appears by the said act of compromise passed before H. B. Cenas, notary, of date the 21st June, 1851, and by the plan marked "A," showing the extent and location of the land thus ceded to the second municipality, which, with copy of said act, are herewith filed and made part hereof. That the stipulations of said compromise of 1851 were all carried into effect, and ever since the title to all said batture, between Delta street and the river above Lafayette street and between Front street and the river from Lafayette street down to Canal street, has been deemed to have been acquired by the city, according to the title of the second municipality, by the title of ownership; that accordingly the city has laid out streets through said batture dividing it into squares, from time to time has sold portions thereof, and has always been recognized as
owner of all that space of said batture not sold.

53 And further complaining, your orator shows that by certain acts of the Legislature of Louisiana passed in 1869 and 1870, that body undertook to grant to the New Orleans, Mobile and Chattanooga Railroad Company the right to locate, construct, and maintain a passenger depot, with offices and apartments suitable for the business of said road, upon that portion of said batture acquired by the city under said compromise of 1851, bounded by Canal, Delta, and Poydras streets and a line parallel to and one hundred and fifty feet easterly from Delta street; and said acts further professed to grant to said company, for the construction of a freight depot, and for other purposes of its business, the right to occupy and enclose the blocks of ground, parts of streets, and portions of the levee embraced within in said batture belonging to the city, and acquired by said compromise, bounded by Girod, Water, and Calliope,
and a line parallel to and two hundred and ninety feet
54 easterly from Water street, with the provision that the com-

pany should not enclose and occupy any part of the said blocks owned by individuals, until [it] has acquired the title thereto; but the wholesale appropriation of the property of the city attempted by these legislative acts is accompanied with no other qualification or restriction whatever; all of which more fully appears by reference to said acts No. 26 of 1869 and No. 31 of 1870, Sess. Acts of 1869, p. 28, and Session Acts of 1870, pp. 55, 58, and 59, specially referred to for fuller explanation and greater certainty.

And your orator further shows that said legislative acts, in their scope and purpose, propose to divest the city of New Orleans of its property, held by the city in its proprietary and private character, and to confer that property on the railroad company named in said acts, that it was wholly incompetent for the Legislature thus to donate the property of this city; that the title of the city to said property stood protected from all
55 such legislation as that announced in said acts; that the acts palpably and grossly transcended the legislative competency; were and are forbidden by the 110th article of the State constitution of 1868, the corresponding article No. 155 of the State constitution of 1880, the Article 1st, Section 10, and Article 14th, Section 1st of the Constitution of the United States, and are void and of no effect.

And your orator shows that said acts were always resisted by said city as invasions of its rights; that its title to said batture lots and squares has been, in fact, recognized by the railroad company by its purchases from the city of some of the squares and lots lying within the limits of the property proposed to be donated by the said acts; that other parties, at about the time of the passage of said acts, were negotiating with the city for the purchase of some of the squares embraced in said attempted grants, but by said legislative acts it was proposed to wrest from the city all said large and valuable property, to the preju-
56 dice of the city and the rights of its creditors, who would be largely benefitted by the large amounts susceptible of being derived from the sales of said batture squares. And your orator further shows that there were two suits brought in the state courts to maintain the pretension of said railroad company, based on said legislative acts; that the judgment in said suits taken together, and they were rendered at the same time and are to be construed together, in their effect as orators charge, maintain the title of the city and declare the invalidity of the attempted grant of said batture property, all of which more fully appears by reference to the suits entitled, The New Orleans, Mobile, and Chattanooga R. R. Co. *versus* City of New Orleans, and the Same *versus* the Same, Nos. 3692 and 3701 of the docket of the Supreme Court *are* of the State, and to the decisions rendered therein, in

May, 1881, specially referred to for fuller explanation and greater certainty.

And your orator shows that, subsequent to said decision,
57 the city, acting upon the interpretations of their effect, proceeded to remove the buildings which the company had placed upon the property of the city, embraced in said acts; thereupon the company enjoined, again setting up said acts, and claiming rights thereunder; and this fresh injunction suit brought by the company, removed to the United States circuit court, as more fully appears by reference to said injunction suit No. 2609 of the late superior district court for the parish of New Orleans, No. 7912 of the docket of the United States circuit court, and the record of appeal to the United States Supreme Court, is No. 17 of the docket, and to which records of said suits reference is also specially made.

And your orator, further complaining, shows that with this appeal pending, involving the property of the city, the city undertook to enter into a compromise with said New Orleans, Mobile, and Texas Railroad Company, and with the Louisville and Nashville Railroad Company, by which it was pro-
58 posed to settle all matters in controversy on said appeal, to confirm to said companies all said property, the subject of said legislative acts, and to dismiss said appeal, which would have made final said judgment of the United States circuit court, as appears by the said act of compromise passed before Samuel Flower, notary, of date the 11th October, 1882, and the ordinance No. 8079, administration series, copies whereof are herewith filed for reference and greater certainty.

That the value of the said batture proposed to be confirmed to said railroad company by compromise, excluding the property within the limits of the attempted donation which the company and others had bought and paid for, is largely in excess of five hundred thousand dollars; a particular estimate of said value by competent judges is herewith filed as part hereof, and the sum stipulated to be paid by the company for the confirmation to it of the large and valuable property is forty thousand dollars, as appears
59 by the aforesaid copies herewith filed.

And further complaining your orator shows, that by the act of the Legislature of Louisiana, number 133 of 1880, your orator is constituted a Board of Liquidation of the city debt, clothed with the authority to apply all the property of the city not dedicated to public use to the liquidation of the bonded debt, which is now upwards of thirteen millions of dollars; that all said property is directed by said act to be turned over and transferred to your orator, solely vested with the power of sale thereof, for the purpose of applying the proceeds to the reduction and retirement of said bonded debt; that the powers of the board are repeated in the legislation of 1882, act No. 58; that prior to the

act of 1880 the act No. 31 of 1876 had pledged all city property susceptible of sale to the satisfaction of the bonded or floating debt, and by later legislation the floating debt being excluded, the reduction to the bonded became exclusive; that
60 thus the city authorities were at and prior to the said so-called compromise stripped of all power of disposition over said property, except to turn it over to your petitioner for the trust stated in said act of 1880.

And your orator further shows that 1869 and 1870 and long prior thereto the city had extended streets through a large portion of batture embraced in said attempted grant to the railroad company, and had laid off the same in squares and lots for sale for account and benefit of said city, as the owners thereof; that the portion alone never sold by the city, but divided into squares for sale, was and is now in excess of the value of three hundred thousand dollars; had long ceased to be dedicated to public use, or to be batture, in the ordinary sense of the word; had become divided into squares, and was all conveyed to your orator by said act of 1880, for the purpose therein expressed; that the
61 portion of said batture embraced in said acts of 1869 and 1870, not divided into squares and lots, is of very great value, and all of it not dedicated to public use, or that may hereafter cease to be so dedicated, is conveyed to your orator by said act of 1880, for said trust thereby created, and said plan is referred to as showing the extent of said batture; and the portion thereof divided into squares and lots by the extension of streets.

And your orator further shows that in the Supreme Court of the United States it opposed the dismissal of said appeal contemplated by said compromise, and said dismissal was stayed by the Court to enable your orator to prosecute this suit to set aside said compromise, as appears by the order of the Supreme Court herewith filed as part hereof.

Further complaining, your orator shows that said ordinance of October 11th, 1882, and said so-called compromise with said railroad companies, which said ordinance is proposed to au-
62 thorize, passed as they were without the knowledge or consent of your orator, persisted in against the remonstrances and protest of your orator, are grossly violative of the legal right of your orator, and of great prejudice to the public interests; that said ordinance and compromise in effect attempt to deprive the bonded creditors of the city of the large and valuable property embraced in said compromise and applicable to pay said debt; that as long as said ordinance and compromise are permitted to be set up by said companies as affording a basis to assert claim to said property, they cloud the title of your orator to said property, for the purposes defined in said act of 1882, and prevent the sale and application of proceeds of said

property, by your orator, for the payment of the bonded debt of the city as required by said act.

And your orator shows, that notwithstanding the premises, the said railroad company do insist that said ordinance and so-called compromise, and said grants which said said compromise undertakes to confirm, are legal and valid, and confer
63 title to said property embraced in said grants upon said companies; that said companies are actually in possession of a large and valuable portion of the property embraced in said grants, and claim and assert title thereto under said legislative acts of 1869 and of 1870, and under said ordinance and so-called compromise of 1882, as well as under the dismissal of the said appeal by the city attempted to be brought about by said compromise. And your orator shows that it is entitled to have set aside and decreed to be invalid and of no force said ordinance and compromise of the 11th October, 1882, in so far as they seek to grant and confirm to said companies any right or title whatever to said property embraced in said legislative acts of 1869 and 1870, as made by said city without authority; and in so as the said compromise and ordinance propose to dismiss said appeal taken by said city from the judgment in the aforesaid suit of the City of New Orleans *vs.* The Mobile and Texas Railroad Company, and to have it decreed that your orator has suc-
64 ceeded to the right of said city to maintain and prosecute said appeal.

To the end, therefore, that the said ordinance and so-called compromise of the 11th October, 1882, proposing to confirm to said New Orleans, Mobile and Texas Railroad Company, as to the Louisville and Nashville Railroad Company, the right upon that portion of the levee, streets, and ground, in the city of New Orleans, bounded by Canal, Delta, Poydras streets, and a line parallel to 150 feet easterly from Delta street, and the blocks of ground, parts of streets, and portions of said levee, bounded by Girod, Water, and Calliope streets, as the same is set forth in said legislative acts No. 26, of 1869, and 31 of 1870, may be decreed to be null and void and of no effect; that it may be further adjudged and decreed that said ordinance and compromise are void and of no effect in so far as they stipulate for the dismissal of the aforesaid appeal now pending in the Supreme Court of the United States, taken by the city from said judgment
65 of the U. S. circuit court, in the said suit of the City of New Orleans *versus* the New Orleans, Mobile and Texas Railroad Company, that it be further decreed that your orator has the right to prosecute said appeal, to reverse the same so far as said judgment decrees said property to said company or affects the same, your orator may seek further and other relief as the case may require.

May it please the court to grant unto your orator the writ of

subpœna, issuing out and under the seal of this court, to be directed to the said, the New Orleans, Mobile and Texas Railroad Company, the said Louisville and Nashville Railroad Company, and the city of New Orleans, commanding them, and each of them, to be and appear in this court on a certain day, and under a certain penalty, then and there to answer the premises and stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

(Signed) MILLER & FINNEY,

66 *Solicitors for Complainants.*

J. H. Oglesby, the President of the Board of Liquidation of the city debt, who being duly sworn, deposes and says, that he knows the contents of the foregoing bill, that the same is true of his own knowledge except as to matters stated on his information or belief, and as to those matters he believes them to be true.

Rule on Defendants to demur, plead, or answer.

Extract from the minutes, April 6, 1883.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, A. D. 1882.

NEW ORLEANS, Friday, 6th day of April, 1883.

Court met pursuant to adjournment.

Present: The Honorable Don A. Pardee, circuit judge.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE R. R. Co. } No. 10180.

On motion of Finney & Miller, attorneys for the Board of Liquidation, plaintiffs in the State court from which this
67 case was removed and complainants here, and on suggesting that the petition in the State court has been recast in this court, so as to make a bill in equity.

It is now ordered that defendants show cause on Wednesday morning, the 11th April, 1883, at 11 o'clock a. m., why they should not demur, plead, or answer the said bill within the delay to be fixed by the court.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 6th day of April, 1883.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's return.

Received April 7, 1883, by the United States marshal, and on April 7, 1883, served a copy of the within rule on Bayne & Denegre, attorneys, by handing the same to Thos. L. Bayne, Esq., in person, in the city of New Orleans.

(Signed) J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.
By E. S. CURRY,
D'y U. S. Marshal.

68 *Order requiring Defendants to Plead, Demur, or Answer.*

Extract from the Minutes, April 11, 1883.

THE BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO. *et als.* } 10180.

This cause [came] on to be heard upon the motion of the complainant of the 6th instant, to show cause why the defendants should not demur, plead, or answer, and was argued by counsel.

On consideration whereof, it is ordered that said defendants be, and they are hereby, required to demur, plead, or answer, on or before the next rule day, viz., the 1st Monday of May, 1883.

Plea, Demurrer, and Answer. Filed May 7th, 1883.

United States Circuit Court. In chancery, No. ——.

THE BOARD OF LIQUIDATION *vs.* THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY and THE NEW ORLEANS AND TEXAS RAILROAD COMPANY.

69 These defendants, the Louisville and Nashville Railroad Company and the New Orleans, Mobile and Texas Railroad Company, reorganized, pleading, demurring and answering to the bill of complaint of the Board of Liquidation of the city debt, complainant herein:

These defendants, now and at all times hereafter, saving and reserving to themselves all benefits and advantages of exception which may or can be taken to the many errors, uncertainties, and other imperfections in said complainant's bill of complaint contained, and especially reserving and insisting upon the exceptions filed by these defendants in the civil district court of the parish of Orleans, when said *writ* suit was pending in that court, and which now constitutes part of the record and proceedings herein, and to so much and such parts thereof as these defendants are advised is or are material or necessary for them to answer—say that they admit that the Legislature of the State of Louisiana passed the act No. 133 in 1880, and provided therein

for a Board of Liquidation, as set forth in said act, but they deny that said Board of Liquidation acquired the power
70 claimed under said act; and respondents say that they verily believe and so charge that said board never caused to be prepared or issued any bonds, nor retired nor cancelled any debt of the city of New Orleans, nor was any transfer made by the city to said board of any property or rights described in complainant's [bill of complaint.]

That said act of the Legislature was practically null for this, among other reasons, that the debt could not be liquidated, nor any bonds issued or disposed of under the terms of said act.

As to the history of the act of 20th of Sept., 1820, denominated an act of compromise, or donation, and of a certain act of 20th of ———, 1851, and the matters stated relative thereto, these respondents do not know how far the same was carried out; but they deny that under said acts the city of New Orleans acquired any rights except as a public municipal corporation created by the Legislature of Louisiana and subordinate to its control as a part of the State government, and they do aver and charge
71 that the power of the State of Louisiana to change the destination of the property referred to in complainant's bill of complaint, has been fully recognized and determined between the city of New Orleans and these defendants in No. 3692, of the docket of the supreme court of the State, which judgment has been declared to be readjudicated, and that the character of right or title of said city, and the power of the State over the same, were and are involved in said suits and are not subject to examination or trial in this case, and defendants ask to be allowed to urge this as conclusive against complainants.

These defendants admit that the Legislature of the State of Louisiana, in the years 1869 and 1870, enacted the laws mentioned, that, under said acts and several ordinances passed by the city of New Orleans, these defendants and their predecessors have laid their railroad tracks in and through certain streets in said city, and have established depots, &c., as therein authorized on part of the ground described in said acts, and they have expended
72 large sums of money in locating, constructing, and maintaining said lines of tracks and depots for use, in accordance with said acts of the Legislature and said ordinances; and these respondents deny that said acts of the Legislature are not within its scope and power, as representing the sovereignty of the State, and deny that these effects is such as is charged by complainants.

Respondents admit that there were certain suits instituted and tried in the State courts of Louisiana involving different only, and do so appear by the records and opinions therein; and in the suit No. 7962, of the docket of the United States circuit court, judgment was rendered by the circuit court of the United States, district of Louisiana, declaring that the judgment of the supreme

court of the State of Louisiana, No. 3692, affirming the judgment of the eighth district court of New Orleans, was *res adjudicata*. Copies of said judgment are hereto annexed, and marked Exhibits A and B.

From the judgment rendered by the circuit court of the United States, district of Louisiana, No. 7962, the city of New
73 Orleans appealed, and said appeal has been pending in said court since October, 1878, and pending in the State court and in the circuit court of the United States at New Orleans since July, 1874; and that complainants have never appeared in said courts or any where else to assert any claim to any matter involved therein until about the 12th of October, 1882, when notice was given to the city authorities by complainant that it would assert its right to the fund derived from the agreement with these defendants, and subsequently application was made to the Supreme Court to be heard there in place of the city of New Orleans, as appellant, as appears by the motion and order therein heretofore mentioned, a copy of said order being marked Exhibit C.

Defendants say that it is true that on the 11th of October, 1882, the ordinance No. 8079 was adopted by the city council of New Orleans, and the agreement referred to was signed by the mayor of said city to dismiss the appeal of the city of New Orleans in suit No. 17 of the docket of said court, and that it had full power to adopt said ordinance and dismiss said appeal.
74 That the city of New Orleans has continuously exercised such powers since its organization as a municipal corporation, and has constantly dealt with all kindred matters in the presence of the Board of Liquidation since its creation, without objection by said board or any assertion of right or claim upon the rights or property involved in this suit or other rights and property similarly situated; and the city of New Orleans has been universally recognized in all of the courts of this State and of the United States, on which it has appeared as competent to control all of its suits, and all that pertains to them, with full power to stand in judgment to appeal and discontinue or dismiss the same, and generally to exercise the powers granted under its charter; and the city has not been stripped of these powers by the act of 1880, or any other act of the Legislature of Louisiana, on the contrary the powers of said city have been confirmed and enlarged by the most recent acts of said Legislature, such as acts No. 20 and No. 81 of 1882; and these defendants deny
75 that complainant has any right or authority to prevent the city of New Orleans from dismissing its new appeal in case No. 17 of the Supreme Court of the United States.

And these defendants say that they have no knowledge as to the amount of the city debt, but they deny that the property or rights involved in this suit have been transferred or directed to

be transferred, or that complainant is vested with any rights in and to the same, or any power to sell and make title or otherwise to deal with any of the matters involved in the suit No. 17, now pending in the Supreme Court of the United States; but, on the contrary, the city of New Orleans had full power to make the agreement of 11th of October, 1882, and to dismiss the appeal in said suit.

These defendants further say that the property described in complainant's bill of complaint, which they were authorized to use by the acts of the Legislature of 1868 and 1870, and upon which a servitude or easement was granted to them by the State is not worth any such sum as is set forth in
76 complainant's bill of complaint, nor half that sum, as they verily believe, and they file herewith affidavits in reference to the value of said property at the date of said acts, and since.

And they further say that in making the agreement herein mentioned, consideration was properly given to the nature of the privileges and rights granted by the several acts of the Legislature which were not as of a sale of property, also in the suit which was pending judgment had been rendered against the city of New Orleans in the eighth district court of the parish of Orleans, on the reconvential demand filed and plead by said city in which it had set out its rights and claims upon said property, and adverse to these defendants' predecessors, in the same manner, as the same is set forth in complainant's bill of complaint and in the decree on said case it was ordered:

"That upon the answer and demand in reconvention filed by the city of New Orleans, there be judgment against the
77 plaintiff in reconvention the city of New Orleans and in favor of defendants, to said plea and demand. The New Orleans, Mobile and Chattanooga Railroad Company. That the several acts of the General Assembly granting the New Orleans, Mobile and Chattanooga Railroad Company the right to construct, maintain and use its tracks, turnouts, switches, depots, etc., etc., along and upon the levee, streets, batture, in front of the city of New Orleans, be maintained as constitutional and valid, and that the city of New Orleans be adjudged to have no right or title of private property in and to the batture lying in front of the faubourg St. Mary, and that the said property be decreed to be the property of the public, whose distinction can only be changed by legislative authority, and which the city cannot alienate or encumber," which judgment and decree was fully affirmed by the supreme court of Louisiana, and which was declared as *res adjudicata* by the circuit [court] of the United States as per
78 Exhibits D and E; the compromise was therefore of a lawsuit in which the judgments of the courts had been adverse to

the rights claimed, and the sum paid by these defendants, viz., forty thousand dollars, was adequate and with the purpose to terminate all litigation with the city of New Orleans, in the case of The New Orleans, Mobile and Texas Railroad Company. The Supreme Court of the United States had confirmed the rights granted under one of the acts of the Legislature of Louisiana, viz., act No. 67 of 1869, and recognized as correct the decision of the supreme court of Louisiana, declared said act constitutional, and that the Legislature had power over the subject.

And defendant further says, that the act No. 31 of 1870, referred to in complainant's bill, confirmed to them through their predecessors all the rights granted under the ordinances adopted by the city of New Orleans of 16th February, 1867, and 15th November, 1867, long before the alleged creation of the Board of Liquidation, complainants herein. Copies of said ordi-
79 nances are filed herewith as exhibits.

And these defendants say that said laws of the State and ordinances of the city of New Orleans were passed to induce the location, construction, and maintenance of a great public highway, which was declared to be of great public use, in which the whole city and State and general public were interested, and from which great public advantage has accrued; that said laws and ordinances were within the scope and power of the State, and were constitutional and valid.

And these defendants deny any allegations in complainant's bill not sufficiently answered, confessed, traversed, and avoided, and aver that they are ready and willing to aver, maintain, and prove their answer and defense, and pray to hence dismissed, with reasonable costs and charges, and for equitable and general relief.

(Signed) BAYNE & DENEGRE,
Solicitors for Defendants.

(Signed) J. T. HARAHAN,
Supt. and Manager L. and N. R. R.

80 Personally appeared James T. Harahan, who, being duly sworn, that he is the superintendent and manager of the Louisville and Nashville Railroad Company, and of the New Orleans, Mobile and Texas Railroad Company, running the division of said railroads within the State of Louisiana, and that the other superior officers of said railroad company are absent from the State of Louisiana, and that he is the representative of said railroad in the State of Louisiana, and within the jurisdiction of the circuit court of the United States, fifth circuit, eastern district of Louisiana, that he has read the above bill, subscribed by him, and knows the contents thereof, and that the same is true

of his own knowledge, except as to those matters he believes to be true.

(Signed) J. T. HARAHAN,
Supt. and Manager Louisville and Nashville and New Orleans, Mobile, and Texas Railroad Companies.

81 Subscribed and sworn before me May 7th, 1883.

(Signed) T. V. COUPLAND,
Commissioner United States Circuit Court, Eastern District of Louisiana.

Entry in Chancery Order Book. Entered May 7th, 1883.

THE BOARD OF LIQUIDATION
versus
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY. } No. 10180.

The defendants herein, by Bayne and Denegre, their solicitors, have this day filed their plea, demurrer, and answer to the complainant's bill of complaint.

Replication. Filed May 22d, 1883.

United States Circuit Court.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO. } No. 10180.

This repliant, saving and reserving to himself all and all manner of advantage of exceptions which may be had and
82 taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto, saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without that, that any other matter or thing in the said answer contained material or effectual in the case to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true, all include matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) MILLER & FINNEY,
Solicitors for Complainant.

83 *Entry in the Chancery Order Book. Filed May 22d*, 1883.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO. ET AL. } No. 10180.

The complainant herein, by Miller & Finney, solicitors, has this day filed its replication to the answer of the defendants herein.

Hearing and submission of cause.

Extracts from the Minutes June 9th, 1883.

BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO. ET ALS. } No. 10180.

Whereupon the complainant offered the following evidence in support of its bill, viz:

The act of compromise between the city and the riparian proprietors, before H. Lavergne, not. pub., of date the 20th September, 1820, p. 408 to 416 of printed record, The City *versus*
84 New Orleans, Mobile, and Texas Railroad Co., No. 144, of U. S. Supreme Court, now No. 17.

The ordinance of the city, which authenticated that compromise. The compromise of 1851, between the city and the riparian proprietors before H. B. Cenas, not. pub., p. 400 to 408 of printed record. The testimony of L. H. Pilié and plan marked A.

Testimony of L. H. Pilié recalled. The resolution of the common council of date 16th December, 1867, authorizing sale of city property. See back of Hoey book.

The testimony of N. T. Hoey, specifications for sale city property in 1868; plans marked B and C.

The testimony of A. C. Hutchinson. Ordinances of common council as follows: No 7483, 7037, 6938, 899, in Jewell's Digest, pp. 617, 626, 627.

Ordinance of council granting permission to Liverpool Warehouse Company.

The act of Legislature No. 133, of 1880, creating Board of Liquidation.

The ordinance of common council No.——, carrying into effect act No. 133.

85 The act of the Legislature No. 58, of 1882.

The testimony of T. Wolffe.

The testimony of J. H. Oglesby.

The petition, answers, and judgment, of the eighth district court in suit No. 758, of the fifth district court, afterwards suit No. 4 of the eighth district court. Motion, or petition of appeal in the

said case, and judgment thereon of the Supreme Court suit is 3701, Docket of Supreme Court, reported in 26 Ann., p. 479.

Petition and order of appeal in suit No. 7972, of the U. S. circuit court. The New Orleans, Mobile and Texas Railroad *vs.* the city, from judgment of that court of 11th June, 1878.

Order of Supreme Court in that suit, made October, 1882, application of the Board of Liquidation, on which that order was made.

The compromise between the City and Louisville and Nashville Railroad Company, act of 11th October, 1882, before S. Flower, Not. Pub.

The resolution 8079, administration series, that led to it.

86 The resolution of common council of date October 11th, 1882, to rescind compromise.

Acts of sale by which the New Orleans, Mobile and Texas Railroad Company acquired following squares on the batture F. Gaudet; Act 20th January, 1868, before H. C. Dibble, Not. Pub. Square Notre Dame, Julia and Pilie.

Act 1st February, 1868, before H. C. Dibble, not. pub., upper half square between Pilie, near St. Joseph and Julia streets.

Act 13 February, 1868, before H. C. Dibble, not. pub., square between Water, Pilie, St. Joseph, and Julia.

Ordinances city council, laying out new streets, Pilie street, Water street, and Delta street.

Testimony of William H. Bell, and plan referred to by him.

Testimony of W. S. Williams, act 51 of record.

Admission that all testimony, pleadings, proceedings, in the suit and judgments, whether of State or Federal courts, contained in the printed record No. 144 U. S. Supreme court, The City *versus*

87 New Orleans, Mobile and Texas Railroad Company, shall be deemed in evidence in this case, subject to qualification specified in admission.

Admission that all legislative act, public or private, touching the subject of this suit shall be used in argument, read from the statute book, and deemed in evidence.

Ordinance offered, marked J, rescinding compromise, admitted; it was not passed.

Testimony of Jesse K. Bell, Edward Conery, Ed. Bower.

And the defendant offered the following evidence in support of its answer, to wit:

Record No. 19 of the eighth district court, for the parish of Orleans, entitled "New Orleans, Mobile and Chattanooga Railroad Company *versus* The City of New Orleans, the answer of the city with reconventional demand made by the city, the opinion and decree and judgment in that case, petition and order of appeal by the city of New Orleans from said judgment.

Opinion and decree of the supreme court of Louisiana,
88 affirming judgment No. 3692, reported in 26 Ann. Reports, from page —— to page ——.

Decree of circuit court of the United States for fifth circuit, eastern district of Louisiana, with pleadings in suit No. 7972 of the docket of said court.

Ordinances Nos. 7483 and 6824 of the city council of New Orleans.

Testimony of R. W. Rogers and E. E. Goddin, pages 27 to 30 of record No. 17, superior court.

Agreement as to record No. 17, formerly 144, admission relative thereto.

Act of the Legislature of Louisiana of 1870, charter of city of New Orleans.

Act of 1882, No. 20, also charter.

Act of Legislature of Louisiana of 1882, and agreement that said acts may be read from the published statutes of Louisiana, without being copied.

Act of the Legislature No. ——, of 1868; charter act of the Legislature No. ——, of 1869; act No. ——, of 1870; and act of the Legislature of 1871, to be read and used as above from published statutes of the State of Louisiana.

89 Act of Legislature of Alabama of charter N. O. R. R. Co.

Ordinances of the city of New Orleans, approved in ——, 1867, ——, 1868, and ——, 1869, with acceptance by Railroad Company.

Ordinance No. 1755, p. 96, Jewell's Digest, as to commissioners of consolidated debt.

Ordinances Nos. 8092, 8043, 8061, and 8088.

Ordinance No. 8127, of 10th November, 1882.

Ordinance No. 7282, of 18th August, 1881.

Ordinances No. 7484, 7973, 7315, 6015, and 6021.

The objection limiting record No. 158 of 5th district court.

Documents marked respectively Exhibit No. 1 and Exhibit 2.

Admission that under ordinances No. ——, relative to commissioners of consolidated debt, that they only had books, papers, and cash, and no other property.

Admissions as to Harrison's testimony.

Ordinance No. 7083, May 17th, 1881.

90 Acts of Legislature of Louisiana, No. 68, approved July 1st, 1882.

Resolution adopted by city council of New Orleans, August 1, 1882.

Ordinance of August 1, 1882, No. 7978, and preceding motion.

The opinion of city attorney, C. F. Buck, Esq., relative to compromise, Exhibit "O."

Resolution of the Board of Liquidation.

The deposition of E. A. Deslonde, and James T. Harahan.

The admissions in this case as taken before the examiner are deemed in evidence.

And the cause was thereupon argued by the counsel for the parties respectively and submitted, and the court took time consider.

Testimony for complainants, Filed June 9, 1883.

United States Circuit Court, Fifth Circuit, Eastern District of Louisiana.

BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE R. R. Co. } No. 10180.

91 Testimony taken on behalf of complainant, under the 67th Rule as amended of the courts of equity of the United States, before Francis A. Woolfley, special examiner, duly appointed to take the depositions of witnesses in the above-entitled cause.

By consent of parties.

NEW ORLEANS, *May* 30, 1883.

Present: Henry C. Miller, Esq., for complainant; Thomas L. Bayne, Esq., for defendant.

Louis H. Pilié, a witness produced, sworn and examined on the part of complainant, says:

Witness's attention is directed to a map before him marked "A" by Mr. Miller for complainant, to state what squares are divided by streets running perpendicularly to the river, and parallel to the river, between Delta street and the river front, and between Calliope street and Canal street?

Answer. From Calliope street to Julia street, and from Delta to New streets, have been divided into squares, Water
92 street was laid out in 1858, Pilie street in 1866, and New street in 1868; from Julia street to Poydras street, from Delta street to Water street, was laid out in 1858, into squares; from Water street to Pilie, and from Julia to Girod streets was laid out in 1866.

Q. Did Delta street and Water street extend from Calliope street to Canal street?

A. Delta street extends from Calliope to Canal street, but Water street extends from Calliope to Poydras streets only.

Q. How far does Pilie street extend?

A. Pilie street extends to Girod from Calliope street to Girod street.

Q. And New street?

A. From Calliope street to Julia street.

Q. And the remainder of the space, from between Pilie street

on the river bank, below Julia street, is not laid out by squares through the projection of streets through them?

A. No, sir; it is an open space of ground used as a landing.

Q. I perceive that on this map, these figures are 1853,
93 1858, 1866, 1870 and 1868. Is or is not that a correct statement?

A. Yes, sir; it is, except Girod street is laid out on the map as in 1868, but only opened in 1870.

Q. Now, then, do I understand that the space between Calliope street and Julia street is divided into squares by streets running parallel to the river and streets running perpendicular to the river?

A. Yes, sir; it is.

Q. And that the space between Julia street and Delta street is divided in a similar manner into squares?

A. Yes, sir.

Q. And as to the space between Girod and Canal streets, do I understand that the space between Delta and Poydras streets is divided into squares by streets running through it?

A. Yes, sir; from Girod to Poydras street only.

Q. With reference to the squares lying between Delta and Pilie streets; Pilie and New streets and Calliope and Julia streets, is it or is it not the case that these squares have been built upon?

A. They are built upon.

94 Q. When were they built upon?

A. Well, it was between 1870 and 1872.

Q. I perceive on this map there, that between Delta and New streets, and between Calliope and Girod streets, there are how many squares?

A. Thirteen squares.

Q. Is it the fact that all of these squares have been built upon, or, if not, relate what squares have been built upon in that space; or, if all have built upon, with some exceptions, state the exceptions?

A. They are all built upon except the square comprised between South and North Market street, and Delta and Water street, between Julia and Notre Dame, Girod and Delta and Water street, the space is not built upon, but it is occupied by the different railroad platforms for freight.

Q. Will you now discriminate and state what squares are built upon, occupied, or used by the railroads, and give the names of the railroads?

A. The squares comprised between Delta and New
95 streets, Julia and Calliope streets, with the exception of the square comprised between North Market, Delta, and Water streets, are occupied by the Louisville and Nashville Railroad Company, and the Chicago, St. Louis, and New Orleans Railroad Company. The square between Girod, Julia, Delta, and Water streets is occupied by the freight platforms of the

Morgan Louisiana and Texas Railroad Company. The squares between Julia, Girod, Water, and Pilie streets are occupied by the depot of the Louisville and Nashville Railroad, and the squares between Girod and Poydras, Delta, and Water streets are occupied by the depot of the Morgan Louisiana and Texas railroad.

Q. At the time that the Louisville and Nashville Railroad Company, or its predecessors, occupied the squares mentioned by you, state whether or not streets were projected so as to divide these squares into streets, as indicated by the map "A."

Mr. Bayne objects to the testimony on that subject, on the ground that the spaces for streets were laid out in pur-
96 suance of some ordinance of the city, and the ordinance itself is the best evidence.

A. Yes, sir; streets were projected at that time.

Q. At that time were any of the squares between Delta and New streets, Girod and Calliope streets other than those occupied by the Louisville and Nashville Railroad Company, or its predecessors, built upon by private parties?

A. No; none of them.

Q. Since the Louisville and Nashville Railroad Company occupied the squares spoken of by you, is it or is it not the case that the squares within the space between Delta and New streets, Calliope and Girod streets have been built upon by private parties.

A. By no private parties excepting the railroad.

Q. No space between that and the river is held by private parties?

A. No, sir.

Q. Since the Louisville and Nashville Railroad Company, or its predecessors, occupied and built upon the squares within the space spoken of, have any other squares within that space
97 been built upon or occupied by railroads, other than the Louisisville and Nashville railroad?

A. No, sir.

Q. Since the time that the Louisville and Nashville Railroad Company or its predecessors have used and occupied the squares spoken of by you, between Girod and Calliope, Delta and New streets, have any railroads occupied or used the squares in that space other than those used by the Louisville and Nashville Railroad Company?

A. No other railroads have than those already mentioned, Morgans Louisiana and Texas railroad, the Chicago, St. Louis, and New Orleans railroad, and the Louisville and Nashville railroad.

Q. But with reference to this entire space between Girod and Calliope streets, and between Delta and New streets, I under-

stand from you that at all times since the streets were laid out that space has been divided into squares indicated by this map by the projection of streets through them?

A. Yes, sir.

98 Q. But no purchase of squares to your knowledge has been made within that space, or no use has been made of squares within that space by parties, whether railroad or private parties, except the squares spoken of by you?

A. Yes, sir.

Q. Now, you have stated that the Louisville and Nashville Railroad Company occupy the squares between Calliope and Girod streets?

A. The Louisville and Nashville Railroad Company occupy squares between Calliope and Girod streets and Water and New streets.

Q. In occupying these squares were or were not these streets closed up by them?

A. Yes, sir.

Q. What streets were closed by the Louisville and Nashville railroad?

A. St. Joseph, North Market, South Market, and Delord streets are closed by the Louisville and Nashville, from Water to New streets; St. Joseph, North and South Market, and Delord streets are closed up by the Chicago, St. Louis and New Orleans Railroad Company on Delta to Water street.

99 The witness has been city surveyor at various periods, is about sixty five years of age, he was born in the city of New Orleans, and is entirely familiar with the formation of the batture property.

Q. Are you familiar with the extent of the batture property at the time of the compromise of 1851; if so, please state the front street, that is to say, the street nearest the river, laid out at that time, and what streets beyond that street the batture then extended; it refers you away back to the compromise of 1851?

A. The street nearest the river at that time was Peter street, now it is called New Levee street.

Q. The batture then extended from New Levee street to where?

A. The batture extended from New Levee street to a point about half way between Water and Pilie streets, as now indicated by the map marked "A," where the river ran at that time.

Q. In the compromise of 1851, the front streets laid out are Fulton, Front, and Delta?

A. Yes, sir.

100 Q. And lying at right angles with these streets then laid out are the same streets indicated upon the map.

A. Yes, sir, from Calliope to Pilie streets, and from Poydras to Canal street.

Q. In what period of time was it that the batture was formed from the point midway between Water and Pilie street to the easterly line of New street, as now indicated on the map?

A. It was formed between 1851 and 1866.

Q. From the easterly line of New street to the river, what was the space in 1866?

A. A very small space; that was not over twenty or twenty-five feet in 1866.

Q. What is the space now between the southerly line of New street and the river?

A. I do not know exactly, but about two hundred and fifty and two hundred and sixty feet.

Q. It was not until then this batture from Delta street to the point midway between Water and Pilie streets had increased in the manner and extent stated by you that these streets were laid out to there as exhibited by this map?

101 A. Yes, sir.

Q. Was New street projected and laid out at the same time Pilie and Water streets were?

A. No, sir; Pilie street was laid out in 1866, and New street was laid out in 1868.

Q. And Water street was laid out when?

A. In 1866, and New street in 1868.

Q. In 1851 what was the extent of the batture, if any, between Delta street and the river, and from Julia street to Canal?

A. The centre of the batture at Julia street was about two hundred and twenty or two hundred and thirty feet from the Delta street of to-day, and at Canal street it was only at that time, 1851, about one hundred and twenty feet.

Q. Will you now indicate on the map the easterly terminus of the batture as it existed in 1851?

A. Witness has drawn a line extending from the point marked "A," on Julia street, to the point marked "B," on Canal street.

Q. That line indicates the extent of the batture which

102 extended from Delta street in 1851?

A. Yes, sir.

Q. That is to say the line where the river then ran?

A. Yes, sir.

Q. Then I understand you, that the lands between that line and the river, illustrates the batture made since 1851?

A. Yes, sir.

Q. What is the ordinary space required for the purposes of commerce; that is to say, where the steam-boats and ships land, and the front now of houses?

A. It depends entirely upon the character of the crafts that line the wharf; where the cotton boats moor, or land, a very large space of the levee is required, where the sugar boats land, it requires also a very large extent of landing, where the produce

boats land, requires less space, more space on the wharf but less space on the levee or land. It is the same also where the barges and boats land. They require less space at the levee but more space at the wharf.

Q. State between what streets is the landing for the
103 steamboats; then the space that is required by the sugar boats, which I understand to be steamboats also, and the space that is used by the produce boats?

A. The space from about Calliope street to Julia street, or a little further on, is used by the barges, from that street to about Poydras street is used by barges and boats, and from Poydras street to Custom-house street is used by the cotton boats.

Q. Will you now please state what is the place of the batture left open for commerce, for the three classes of boats to land, at this port spoken of by you?

A. Well, for the barges there is on an average about one hundred and twenty-five feet in width.

Q. That extends from what point?

A. From Calliope to about Notre Dame street.

Q. And beyond New street and Pilie street?

A. Yes, sir; for barges. But the space is about one hundred and sixty feet, that is to say, from about Notre Dame street to Poydras street, and beyond Water street, and from Poydras street to Custom-house street for cotton boats the space is about
104 two hundred and eighty, or two hundred and ninety feet beyond Delta street.

Q. Are the spaces described by you sufficient for the purposes of commerce?

A. No, sir; they are not; if they were twice as large they would be more convenient; they are too narrow; I am on the levee every day, and I can see.

Q. Is it, to your knowledge, that the city of New Orleans, at any period of time from 1860 down to the present time, has sold any squares between Delta and New streets, Calliope and Julia streets, and between Delta and the river and Julia and Canal streets; if so, please state the periods of time when the city ever sold, or offered for sale, such property?

Mr. Bayne objects, as the sales themselves will be the best evidence.

A. The city has sold squares between Delta and Water streets, from Calliope to Poydras streets; the city has sold part of the square between Water and Pilie streets and Calliope and Julia streets.

105 Q. Will you now state the periods of these sales?

A. As far as I am able to say, the city sold the first-mentioned square between Delta and Water streets and from Poydras to Calliope streets in 1866, and part of the squares

lastly mentioned which are comprised between Water and Pilie streets and Calliope and Julia streets in 1868.

Q. Will you state who was city surveyor at that time?

A. Mr. William H. Bell was city surveyor in 1868, and I was city surveyor in 1866.

Q. Were you then as city surveyor called upon to lay out the squares to be sold?

A. Yes, sir; I made the plans at that time from Girod to Calliope streets and from Delta to Water streets; there were six squares divided into lots.

Q. And there were sales made according to these plans?

A. Yes, sir; in 1868 the city sold two squares between Girod and Poydras streets and Delta and Water streets to the Ponchartrain Railroad Company.

106 You spoke of the plan made by you at the time these sales were made; can you furnish a duplicate of that plan?

A. Yes, sir; I think I have it.

Mr. Miller, for complainant, now offers in evidence the plan marked "A," on which the witness has testified, and which he identifies [*it*] as a correct map, exhibiting the streets running perpendicular to the river, and parallel to the river between Fulton and New streets, and Fulton and Water streets, and the streets running through the whole space down to Canal st.

Cross-examined.

By Mr. BAYNE, for defendants:

The property between the line recognized by the judgment of the court in the case of the heirs of Delord Sarpy, against the city of Orleans, and Calliope street, and between Water and New streets, had been purchased by the New Orleans, Mobile and Texas Railroad, now the Louisville and Nashville Railroad Company, in 1868, from the heirs of Sarpy and Leon Burthe, and also the raparian rights between the first described line

107 and Calliope street, and extending from New street out towards the river.

Q. And that front is occupied by the Louisville and Nashville Railroad Company as their wharf, extending three hundred and fifty-five feet?

A. Yes, sir; the riparian rights were bought by the New Orleans, Mobile and Texas Railroad Company, now the Louisville and Nashville Railroad Company, and the wharf has been built upon these riparian rights by the Louisville and Nashville Railroad Company, and completed by it, and occupies the space in front of all the property from Calliope street, running down three hundred and fifty feet, as well as the shed for the reception of fruit.

Q. Are the yards and the workshops of the Louisville and Nashville Railroad Company all on that property?

A. That I don't know anything about; I describe the property which I know they bought in 1868.

Q. What were the dimensions of that?

108 A. The dimensions are from Calliope street, running down about three hundred and fifty or three hundred and fifty-five feet.

Q. All that running back from New street?

A. It runs back from New street to Water street, and comprises twelve lots.

Q. Extending along Water street to the line marked "B," and from Water street to the river on a line extending from "D" to "C"?

A. Yes, sir.

Q. Which cuts diagonally across St. Joseph street from D to C, and crossing it entirely, and occupying a portion of the line marked the yard of the Louisville and Nashville Railroad Company on New street?

A. Yes, sir.

Q. And the whole is shown on the map which is attached to the record in the case of the City of New Orleans, appellant, against the New Orleans, Mobile and Texas Railroad Company, No. 144, now 17, said map being marked No. 5, with the words page 257, filed on the 27th May, 1878, in the said record?

109 Yes, sir.

Q. This map shows the property within the space described, owned by the New Orleans, Mobile and Texas Railroad, now the Louisville and [Nashville] Railroad Company, and the same is correct in its description?

A. Well, I don't know about that.

Q. Do you remember when St. Joseph street was laid out to Water street?

A. It was laid out in 1866.

Q. Now, at the time they bought from Burthe and Sarpy there was no street laid out there?

A. There was a street laid out there after 1866 and before 1868 only out to Pilie street; but from Pilie street to St. Joseph street was not laid out to the river.

Adjourned to Saturday, June 2d, 1883, at 12 o'clock m.

United States Circuit Court, Eastern District of Louisiana.

THE BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE R. R. Co. } No. 10180.

110 The testimony on behalf of complainants resumed this day, as per order of adjournment.

NEW ORLEANS, *June 2d*, 1883.

Present: Henry C. Miller, Esq., for complainants; Thomas L. Bayne, Esq., for defendants.

L. H. Pilie, recalled on behalf of complainants.

Direct examination resumed.

By Mr. MILLER:

Q. Under the act of 31 of 1870, there is a grant to the New Orleans, Mobile, and Chatanooga Railroad Company for the construction of its freight depot, and for other purposes of its legitimate business, the right to enclose and occupy lots of ground, parts of streets, and portions of the levees bounded by Girod, Water, and Calliope streets, and on a line parallel to, and two hundred and ninety feet easterly from Water street—will you please state and indicate on the map marked "A," that line of two hundred and ninety feet, so as to show the extent of that alleged grant?

A. The line of two hundred and ninety feet from Water
111 street is indicated on the map by the letters E and F.

Q. Under the same act there was a proposed grant to the railroad company to locate its passenger depot on the space between Canal, Delta, and Poydras, and a line parallel to and one hundred and fifty feet easterly from Delta street. Will you please indicate on the map "A" the extent of that grant?

A. I have indicated on the map in pencil the line "G" to "H," parallel to Delta street, to a distance of one hundred and fifty feet easterly from Delta street.

Cross-examination resumed.

By Mr. BAYNE:

Q. You say that the line from Calliope street, three hundred and fifty-five feet from Calliope street, is the line indicated on this map by "C" and "D" and embraces the wharf of this railroad company?

A. Yes, sir; it does.

Q. They being the owners of the property in the rear of the river?

112 Q. Do you remember whether that wharf privilege is embraced in the joint resolution of 1869?

A. Yes, sir.

Q. Now the remainder from this line C D to the next front is occupied by the wharf of the St. Louis, Chicago and New Orleans railroad?

A. Yes, sir; that begins above.

Q. The Jackson Railroad occupies the wharf above?

A. Yes, sir.

Q. For almost the same distance?

A. Well nearly a thousand feet from above Calliope street, two hundred feet and running to Thalia street the whole front; then comes the wharf of the New Orleans Pacific Railroad running from Thalia street to Terpsichore street, about a thousand feet in front.

Q. Is that wharf of the Louisville and Nashville railroad of three hundred and fifty-five feet embraced in the front of their property proper?

A. Yes, sir; and since that time, about two years ago, they got an extra grant from the city of New Orleans of about
113 two hundred feet more, the whole extending above Calliope street on to the line of the Chicago, St. Louis and New Orleans railroad.

Q. You said in your opinion that this space which is left from the property, which is not built upon that space between Delta street and the river, and running up to Poydras street, is open, occupied only by the railroad tracks?

A. Yes, sir; only by the railroad depots and railroad tracks of the different railroads.

Q. The private buildings only extend to Delta street?

A. Yes, sir.

Q. And all of the different railroads, except the North Eastern, concentrate within that limit?

A. Yes, sir; that is to say, the Morgan, the St. Louis and Chicago, and Louisville and Nashville, are all concentrated between Delta street and the river.

Q. And these railroads that you speak of, the Chicago, St. Louis and New Orleans, and the New Orleans Pacific, are occupying them under grants from the city of New Orleans?

114 A. No, sir; the New Orleans Pacific is occupying it, but that is above, and the Chicago, St. Louis, and New Orleans have got a grant from the city for a part of their front.

Q. Water street, although laid down on the map here, is not used as a street, except by the Belt railroad?

A. Water street, from the corner of Calliope to Poydras street, is open and used by the Louisville and Nashville railroad, as well as the public at large. It is a street now open.

Q. Beyond that point there is a warehouse?

A. Yes, sir; that is between Erato and Thalia streets. It is closed by the Liverpool Cotton Press.

Q. And by the Belt railroad?

A. The Belt railroad occupies it on this side, but it is open at Erato street, coming down. But it is occupied by the railroads.

Q. By the Chicago and St. Louis and by the Belt railroads?

A. The Chicago and St. Louis and partly by the Belt railroad.

Q. The Belt railroad has another grant from the city?

115 A. Yes, sir; both railroads.

Q. Is not a part of the buildings of the Chicago, St. Louis

and New Orleans railroad and the Belt railroad on said street?

A. No, sir; they have not any buildings on Water street. None at all on Water street, except the Liverpool Cotton Press, which extends one block, between Erato and Thalia, and blocks up that street for one square.

Q. Have not these squares of ground acquired their value chiefly from the competition between the railroads.

A. That is a very delicate question and I will answer it in this way. The property at the time it was sold—these batture lots had a value of three times more than they have at the present time. It was long before the establishment of any railroads. They have been that much less in value since 1859 and 1860.

Re-examination.

By Mr. MILLER:

116 Q. Has not every railroad or corporation, except the New Orleans, Mobile, and Chattanooga railroad, occupied any of the batture lots under grants from the city?

A. No, sir; none that I know of. They have all bought the property from the city which they occupy; the Morgan railroad bought two squares bounded by Water, Delta, Poydras and Girod and Julia.

Q. And so of the other railroad corporations; they have all bought of the city?

A. Yes, sir.

Q. These grants of which you speak of—the river front—were they grants to use the wharves, or of what nature?

A. To use the wharves and landings for the vessels and their ferries.

Q. And whatever these grants were are shown by the ordinances of the city council?

A. Yes, sir.

Q. What has caused the depreciation of these lots since the period when railroads were unknown?

A. I don't know; probably they began at that time to go down, until now they are worthless.

117 Q. You spoke of the Liverpool Cotton Press; does that occupy any street leading to the river?

A. No, sir; it only blocks up one street for a square in length, between Erato and Thalia.

Q. That is, it occupies the space between Water and Delta street?

A. Yes, sir.

Q. But it leaves all the streets leading to it?

A. It leaves Erato and Thalia streets open, which lead to the river; all the streets running parallel to the river are open except that block.

By Mr. BAYNE:

Q. The squares occupied by the Louisville and Nashville railroad are what?

A. The square bound by Water, Pilie, Girod and Julia streets, and the second square would be that bounded by Water, Pilie, St. Joseph, and Calliope streets; these are the squares occupied by the buildings; also the square bounded by St. Joseph, Calliope, New, and Pilie street. That square is not occupied, although used by the railroad company. There are no
118 buildings on it.

Q. The square described by you as between Pilie street and Water street?

A. Pilie, Water, and Girod and Julia marked as two squares by the figures 27 A and 26 A; these squares are designated on the map "A;" they are occupied by the freight depot of the Louisville and Nashville railroad warehouse for cars.

Q. In all, how many squares are there by this map?

A. Three squares and about a quarter.

Q. Which of these squares do you say belongs to the road itself?

A. The two upper squares bounded by Water, New, St. Joseph, and Calliope streets; they were bought by the railroad from the heirs of Sarpy and Leon Burthe in 1868.

Witness is asked to withdraw the map marked "A," and to designate upon it in his own handwriting the squares oc-
119 cupied and used by the Louisville and Nashville Railroad, marking those purchased from the heirs of Sarpy and Leon Burthe from the others.

To Mr. BAYNE:

All the space on the wharf is inadequate for the purpose of commerce from Calliope street to Custom-house street; from Delta back to Poydras street; from Canal back to Water street; from Poydras back to Girod street, back to Pilie street from Girod to Julia; back to New street from Calliope to Julia. In other words, all the space marked Levee on the map.

Terence Wolf, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

To Mr. MILLER:

I reside in the city of New Orleans; I am about thirty years of age; I am secretary for the Board of Liquidation of the city debt, and I have fulfilled the duties of that position since
120 the organization of the Board.

Q. What functions have the Board of Liquidation performed since the organization in 1880?

A. They have taken entire charge of the bonded indebtedness of the city of New Orleans.

Q. Who has the custody and the application of the moneys derived by taxation to pay the bonded debt?

A. The Board of Liquidation.

Q. Who has applied the moneys raised by taxation to pay the interest on the bonded debt of the city?

A. The Board of Liquidation.

Q. Has the Board of Liquidation applied any other assets to pay the bonded debt other than the moneys derived from taxation?

A. Yes, sir; all moneys raised from any source whatever; property of any description in the city goes to pay the bonded debt.

Q. In point of fact has the Board applied any moneys to pay the bonded debt other than those derived from taxation?

A. Yes, sir; a great deal.

121 Q. And this money was devived from the sources stated by you?

A. Yes, sir.

Q. What control, if any, has the city of New Orleans exerted over property not dedicated to the public use, since the organization of the Board of Liquidation?

Mr. Bayne for defendants objects to the question as it is a question of law and not a question of fact.

Q. I refer entirely to the fact; that is to say, you are now asked what control, if any, has the city of New Orleans exerted over property not dedicated to public use?

A. None whatever.

Q. The act of 1880, under which the Board was organized proposed the issue of certain bonds, were any bonds issued under that act?

A. No, sir.

Q. Why was that?

A. Because they called for a scaling of the debt at fifty cents on the dollar.

Q. What disposition did the creditors manifest with reference to that act, did they accept it or reject it?

A. They rejected it.

Q. And therefore that act was a failure for all purposes

122 authorizing the issue of the bonds?

A. Yes, sir.

Q. The act of 1882 proposed the issue by the Board of Liquidation of certain bonds; what bonds and to what amount and for what purpose have the bonds been issued, if any, by the Board of Liquidation under the act of 1882?

A. Under the act of 1882 the board issued $1,100,000 of bonds

to pay past-due coupons not prescribed, and then they issued some $600,000 or more of bonds—new bonds in exten[sion] of the bonded indebtedness.

Q. You say the board has issued $600,000, as I understand, in extension of bonds?

A. Yes, sir.

Q. Then the board has also issued $1,100,000 in extension of coupons?

A. Yes, sir.

Q. For the coupons they issued what are called ten-years certificates?

A. Yes, sir.

Q. And for the bonds they issued forty-years bonds?

A. Yes, sir.

Q. Then the board has issued the bonds and certificates required by the act of 1882?

123 A. Yes, sir.

Q. At the present time, is the board taking any steps towards the performance of the duties imposed upon it by the act of 1882?

A. Yes, sir; every day.

Q. That is, every day the board is doing what?

A. Issuing bonds.

Q. In extension of the bonded indebtedness under the act of 1882?

A. Yes, sir.

Q. How is the board organized; who composes it?

A. It is composed of six life members and three city officers, the mayor, treasurer, and comptroller, which change according as the city government does.

Q. Those that you speak of as life members of the board apart from the city government?

A. Yes, sir.

Q. State who the members are?

A. J. H. Oglesby, president; S. H. Kennedy, E. A. Palfrey, John Phelps, A. J. Gomila, Henry Gardes, W. J. Behan, mayor; B. T. Walshe, treasurer, and J. V. Guillotte, comptroller.

Cross-examined.

By Mr. BAYNE, for defendants:

124 Q. The city members of the board last year were whom?

A. The same men I have named, ever since the formation. The board has no change of its life members.

Q, But I mean of the city members, who were they last year?

A. They were Mr. Shakespeare, mayor, B. T. Walsh, administrator of finance, and W. Huger, administrator of accounts.

Q. These three being the officers of the city government at that time members of the council?

A. Yes, sir.

Q. That is, in October, 1882.

A. Yes, sir.

Q. You say that the act No. 133 of 1880, was a failure, because the creditors refused to accept the repudiation of one-half of their debt?

A. Yes, sir.

Q. And no bonds under that act were ever issued?

A. No, sir.

Q. They were not printed?

A. Yes, sir; they were printed, but never signed or issued.

Q. When were the first bonds extended under act No. 58 of 1882?

A. I do not remember the date.

125 Q. Is that the date?

A. The first bonds were issued October 12th, 1882, and the first bonds extended November 10th, 1882.

Q. These then were the first bonds and the first certificates that were issued under act No. 58 of 1882?

A. Yes, sir.

Q. You say that the city of New Orleans has not exerted any power over property since then?

A. Since the formation of the board all applications for the lease and purchase of property, real estate, are directed to the board and acted upon by the board.

Q. You say it has not exerted any power; are you not aware of the fact that the city has passed ordinances for the lease of a large number of rights and franchises. Take the Morgan railroad depot for instance—have they not granted, renewed, and extended that right?

A. Yes, sir; but not in the shape of franchises; they get no money for them.

Q. I ask you whether it is a fact or not that the city has renewed a lease to Morgan of his depot?

A. That I don't know.

126 Q. Has the city, or not, made any other lease or grant since 1880?

A. I don't know.

Q. Has not the city sold a grant to the Carrollton Railroad Company?

A. Yes, sir.

Q. When was that?

A. Last year.

Q. What time?

A. I don't remember the date.

Q. That was in 1882?

A. Yes, sir; the grant to the Carrollton railroad was not for money; it was for work to be done, and therefore not realizing anything, the board could not take it. The law simply says, all assets realized shall be turned over to the board. The Carrolton railroad was sold, subject to paving to be done, and therefore the board could have no charge over it; they did not sell it for cash, but for paving.

Q. For how much?

A. I think $350,000.

Q. Has not the city of New Orleans disposed of other grants to other railroads—the Crescent City for instance?

A. I don't remember.

Q. Could not the city of New Orleans have exercised
127 authority over these matters without you being personally cognizant of it?

A. Yes, sir.

Q. Then you don't know whether or not the city has exerted power over that property?

A. No, sir; the city may do it, and I know nothing of it.

Re-examined by Mr. MILLER:

Q. The sale of grants of which you speak—what do you mean by sales of grants?

A. I mean franchises.

Q. You mean franchises?

A. Yes, sir.

Q. Then by the use of the term sales of grants—what do you mean by that?

A. By grants I mean franchises and privileges.

Q. What sort of a privilege is it if the city sells real estate to the railroads?

A. The right of way through the streets.

Q. Then that is what you mean by sales of grants in connection with railroads?

A. Yes, sir.

128 Q. Well, now, have you any knowledge whatever of any sales made by the city of rights of any other kind upon the property of the city?

A. In transferring property, in several cases they have had to come to the board because the parties wanted their title, and they would not take their title from the city, and it went through the board. The president intervened in the sale, and the money was turned over to the board.

Q. What sort of property was that?

A. Real estate belonging to the city.

Q. What knowledge have you of any other sales of any other rights upon the property of the city made by the city of New Orleans?

A. Except where I got the money for the real estate, the city may give a privilege or something and I know nothing about it.

Q. Something has been said about a lease to the Morgan railroad; have you any knowledge of that?

A. None whatever.

Q. If there is any such sale, the ordinances of the city would speak of it?

129 A. Yes, sir. It must be on file every day they give grants to railroads; but I don't know that it is anything more than a privilege without compensation.

Q. What sort of grants are these to railroads that you speak of occurring every day?

A. I have no idea except what I read in the newspapers.

Q. Have you ever known of an instance where the city granted to a railroad any real estate?

A. No, sir; none.

Q. Have you known of instances of the city granting to a railroad the right to use the wharves or a portion of the levees?

A. Yes, sir.

Q. What sort of rights are these?

A. I suppose the privilege of wharfage and the privilege of running their tracks.

Q. Have you any knowledge of any other privileges by the city?

A. No, sir.

Re-cross-examined.

By Mr. BAYNE:

Q. You said something about the sale of real estate; was the act of sale by the city? Was it not made by the city itself?

130 No sale has ever been made without the Board of Liquidation intervened?

A. That I think is so, I do not know the legal forms.

Q. Has any act of sale ever been passed for a piece of real estate independently of the Board of Liquidation, if so what piece?

A. I don't know. I don't know who intervened, or who sold it, whether it was the board sold or the city, or the board intervened, I don't know it officially.

Q. You are the custodian of the records of the Board of Liquidation?

A. Yes, sir.

Q. Have you got any title to any property from the city of New Orleans to the Board of Liquidation?

A. Nothing except the ordinances transferring it to us.

Q. That ordinance referred to what was in the hands of the board of administrators of the public debt?

A. No, sir; it called for all the property not dedicated to public use; the ordinances will speak for themselves. Under the

act of 1880 no bonds were issued, but the taxes were turned over to the Board of Liquidation.

131 Q. What year do you refer to now, 1880 or 1881?

A. At the time they make the budget.

Q. How many years taxes has the board handled?

A. Every cent collected since its organization up to date, all taxes of all sorts?

Complainants now offer in evidence the ordinances of the common council of the city of New Orleans, of the date of ———, 1880, No.———, administration series, transferring to the Board of Liquidation all the property not dedicated to public use.

Mr. Bayne for complainants objects, on the ground that the ordinances speak for themselves.

Counsel for complainants offer in evidence the testimony of William H. Bell, contained in the six printed pages marked page 52, 54, 55, 56, 57, and 58, now filed and marked in

132 this re-cord as "Complainants No. 6."

N. J. Hoey, a witness produced, sworn, and examined on behalf of complainants, deposes and says:

To Mr. MILLER:

I have resided in the city of New Orleans all my life; I am about forty-five years of age; I am an auctioneer by profession, and have pursued my business as auctioneer in this city for the last twenty-five years.

Q. Are you familiar with property in the city of New Orleans?

A. Yes, sir, I am.

Q. And with reference to that portion between Canal and Calliope street, and between Delta street and Water street and the river—have you had any opportunities of becoming familiar with the value of that species of property?

A. Yes, sir.

Q. Can you tell me when the city for the first time made sales of the batture property between Calliope and Canal streets, and between Delta street and the river front below Poydras

133 street; that is, between Poydras and Canal and between Delta and the river, and between Poydras and Calliope streets; if so, please state the dates, and what portion of the property of that batture was then sold?

A. I don't remember any sales having been made between Delta and the river and Canal and Poydras.

Q. Now, as to between Poydras and Calliope, Delta and the river?

A. Yes, sir; there were sales there, I think, in 1868.

Q. Is that your recollection only, or are you positive there were sales made about that time?

A. In January, 1868, I know we sold these two squares to the railroad company at auction; that is, the Pontchartrain Railroad Company.

Q. You sold to the Pontchartrain Railroad Company what squares?

A. The square between Girod and Lafayette, Delta and Water street, and the square between Poydras and Lafayette, Delta and Water street, being the squares indicated on the map now before me, marked "A;" one of the squares is M. L. T.

Q. When were these sales made?

A. In January, 1868.

134 Q. Do you recollect the price paid for these squares?

A. My impression is it was $130,000 for these two squares.

Q. Have you any knowledge of any other squares in the space below Poydras and the space below Calliope, between Delta and the river?

A. Yes, sir; we sold several others, at the same sale three or four others.

Q. Indicate those sales.

A. I would have to refer to the books.

Q. These sales, as I understand you, were made by your firm of auctioneers at that time?

A. Yes, sir.

Q. What time did you make those sales; who were your principles?

A. Under the direction of the finance committee of the city of New Orleans, for the city's account.

Q. Have you any knowledge of the laying out of the streets indicated on this map as Pilie, Water, Delta, and New street; and, if so, state when these streets were laid out.

A. I cannot speak sufficiently particular about that.

Q. When you made the sales of which you speak, by what boundaries were these squares sold?

135 A. The streets were mentioned just as they are on this map.

Q. Were they sold by the boundaries of the streets?

A. Yes, sir; as they are exhibited on the map marked "A."

Q. Have you knowledge of any sales of these lots in the space I have described to you made by other auctioneers?

A. Not within that space; no extensive sale within that space; that is the last extensive batture sale that has been made.

Q. Have you any knowledge of sales of that batture property, not of an extensive character?

A. Well, I have, but I could not price them; not without referring to my books.

Q. Can you give us the time when these sales were made?
A. You all know how long that time is, 1869 or 1870.
Q. But you can state of the fact of the sale without your books?
A. Yes, sir; distinct sales having been made about this locality.
Q. Your books speak of these besides that?
A. Yes, sir.

136 Q. What is the value of the space of ground between Canal street and Poydras and between the river and Delta street?

A. Well, that would be about eighteen lots. I should say the eight front lots would be worth about $12,000 each lot. It would make about eight lots. And ten lots in the upper one between Gravier and Poydras, Delta and Water streets, which I would estimate at $10,000 each.

Witness' attention is directed to the space between Delta and the line, described on the map marked "A," extending from G to H, and marked "line of one hundred and fifty feet from Delta street, and between Canal and Poydras street."

Q. What is the value of that space of ground enclosed within the boundaries I give you?
A. From Canal to Poydras, Delta, and the line, $196,000, say about eighteen lots.
Q. In making that estimate, do you, or not, make the valuation on its being divided into building lots; or do you make the valuation on the whole open space?

137 A. I make it upon the extension of Gravier street through it, dividing it—two squares—and as building lots.

Q. Could you adopt any other mode of valuation upon it, and having Gravier street running through it?
A. If I were to vary my estimate upon it, it would be to increase it if Gravier street was not to be extended through it. If I was to be assured that the whole body of land should be undivided from Canal street to Poydras street, the valuation would be increased, that is for manufactures, or to any one controlling the business of the levee in front of it.
Q. Have you any knowledge of any sales of property between Canal and Poydras, Delta and Front streets?
A. Not very lately.
Q. Well, at any time?
A. Yes, sir; we have sold some of that. We sold at private sale some of this to Conery, after a sale having been made of it by Van Zinken. He was the surveyor, and auctioneer of the sales in 1866, for the sale of the property.

138 Q. Describe accurately the portions of the squares then sold by Van Zinken?

A. I could not do that except to say that it was one of these between Canal and Gravier, Delta and Front streets, and Gravier, Poydras, Delta, and Front streets.

Q. Were any other squares sold by Van Zinken?

A. I might state six or eight squares above that, but I don't know of it.

Q. The sales were made by the city of New Orleans?

A. Yes, sir.

Q. About what year?

A. In 1866.

Q. Can you state for what price these squares were sold at that time, or at what price the building lots were sold for?

A. I can only approximate it: I have a memorandum. Some of these corners, the corner of Poydras street, brought $12,000 and over. The corners of Poydras, Front, and Delta.

Q. That is for the building lots?

A. Yes, sir.

139 Q. What did the other lots bring; not corner lots?

A. Between $8,000 and $9,000.

Q. How many building lots in the squares of Poydras, Gravier, Front, and Delta?

A. Eleven.

Q. And these lots brought from $8,000 to $9,000 apiece, except the corners, which brought more?

A. Yes, sir.

Q. How was it with respect to the sales made between Poydras, Lafayette, Delta, and Front streets?

A. There was a decrease of probably $1,000 a lot, of these interior lots.

Q. How were the sales of the property at that time with respect to the lots between Delta, Front, Girod, and Notre Dame street?

A. They decreased as you went up, considerably more than that.

Q. Were all these lots sold at that time in the squares successively from between Delta and Front; and up to what point?

A. Up to St. Joseph street.

Q. And the prices brought for building lots in these squares decreased?

A. Yes, sir.

140 Q. As you went up to Calliope street?

A. Yes, sir.

Q. Now I omitted to ask you what prices were brought by the property between Delta and Water?

A. As near as I can remember $8,600 for the interior lots and up to $10,000 were paid at the corners.

Q. Have you any knowledge of sales between Front and Fulton street and Canal and Calliope streets?

A. I cannot speak especially with regard to that now without examination.

Q. With reference to the space between Poydras, Calliope, Delta, and the river, what valuation would you place upon the ground embraced within these boundaries; commence at the beginning and dictate the point of each particular square.

A. Poydras, Lafayette, Delta, and Water; fifteen lots at $8,000 a lot; that is, $120,000; and the fifteen lots between Girod, Lafayette, Delta, and Water streets, at the same figure, $120,000.

141 Q. Both of these squares are owned by the Morgan Louisiana and Texas Railroad Company?

A. Yes, sir.

Q. And Girod, Notre Dame, Delta, and Water streets?

A. Girod, Notre Dame, Delta, and Water streets, ten lots at $5,000 each, $50,000.

Q. And the square between Notre Dame, Julia, Delta, and Water streets?

A. Nine lots at $6,000 each, $54,000.

Q. And the square between Julia, St. Joseph, Delta, and Water streets?

A. Twenty-one lots at $6,000 each, $126,000.

Q. Take the square between St. Joseph, North Market, Delta, and Water streets?

A. I would put these lots at the same price, $6,000 each lot; I do not know what that scale is; it is about ten lots at the same price, $6,000 each lot, $60,000.

Q. Now take the square between North Market, South Market, Delta, and Water streets?

A. I have put the whole of it from St. Joseph to Delord

142 in this last ten lots at the same price.

Q. That is to say the square between St. Joseph, Delord, Water and Pilie streets?

A. About twenty-one lots at $6,000 each lot, $126,000.

Q. That would give a valuation of $126,000 for that square?

A. Yes, sir.

Q. Take the square between Julia, Notre Dame, Water and Pilie streets. which is marked here 26 A?

A. Nine lots at $7,000 a lot, $63,000.

Q. Then the valuation of the square, between Girod, Notre Dame, Water and Pilie, is how much?

A. Ten lots at $6,000 a lot, $60,000.

Q. That is the square marked 27 "A," on the map "A"?

A. Yes, sir.

Q. That aggregates for that square, how much?

A. $60,000.

Q. Now, to the square between Julia, St. Joseph, Pilie and New street. What is the value of that square?

A. That is nineteen lots at $7,000 a lot $133,000, and in
143 putting that valuation upon it, I have deducted the lots, which appear to be detached by the intervention of the line C D, through the square.

Q. These figures given by you do they or not represent what you would consider to be the value of these lots for the purposes of sale?

A. I really consider, that, if this property was placed upon the market properly, and properly advertised, it would bring that amount.

Q. What would be the aggregate in round numbers, of the value of all this property, at the value of which you have testified?

A. Something over $1,000,000.

Q. That is to say, the value of the batture property, between the limits of which you have spoken, and leaving out the property, between Calliope and St. Joseph street, Water and the river, in your opinion the residium, would be worth how much?

A. Fully $1,000,000.

Q. Your firm is the firm of Hoey and O'Connor?

A. Yes, sir.

144 Q. What is the character of your business, large or small?

A. Our business is large.

Q. What proportion of the sales of property do you suppose you make in New Orleans in the course of a year.

A. I believe we are equal to the largest.

Q. That is to say your firm is the largest in the city?

A. Yes, sir.

Q. Prior to your connection with Hoey and O'Connor, had you any association with any auctioneers in this city?

A. I was a partner of Mr. Girardey since 1858.

Q. Down to what period?

A. Down to 1873.

Q. What was the character of Mr. Girardey's business while you were with him?

A. We held the top rank.

Q. Prior to that time had you any association with anybody in this city?

A. I was four years with Beard & May.

Q. What was the character of their business?

145 A. They had two-thirds of the business in the city.

Q. Was it during your connection with the firm of Beard & May that you first had opportunites of knowing the value of this batture property?

A. Yes, sir.

Q. Did Beard & May make any sales of this batture property?

A. I think they made two sales during 1852 and 1853.

Q. Therefore, the sales of this property within the limits of which you have spoken were sold in 1852 and 1853?
A. Yes, sir.

Cross-examined.

By Mr. BAYNE:

Q. Within the limits which you have described of property worth a million dollars you have embraced property belonging to all the private owners as well?
A. That is marked as belonging to private owners, squares 26 A, 27 A, Morgan's Louisiana and Texas railroad.
Q. And the property that belongs to private owners?
A. Yes, sir; I embrace all of that property, except that
146 above the lines C and D to Calliope street, and from New to Water street.
Q. You embrace it all, no matter to who it belongs?
A. Yes, sir; private owners as well as the property occupied by the railroad.
Q. Do you know how much of this property which you have referred to is acquired by the railroad by purchase?
A. I do not.
Q. Do you know much of this property *as* [is] occupied by the railroad under grants from the Legislature?
A. I do not.
Q. You *you* do not know what particular parts of this property; you do not discriminate any of the property?
A. No, sir; I could speak of that in conversation, but I could not testify about it.
Q. This property, has it increased in value in consequence of the competition of the railroads for the purchase of it?
A. Certainly.
Q. Most of the leading railroads are seeking that locality?
147 A. Yes, sir, seeking that locality.
Q. That increase has been within what time?
A. Gradually, since the Chattanooga Railroad Company started to take hold of it.
Q. What is the increase in value gradually ever since?
A. Yes, sir; the first competition was with Morgan, and the next competition was with the Jackson Railroad Company.
Q. Prior to that time the value was less?
A. Well, it had not been tested for many years.
Q. When you speak of sales of a portion of the property made 1868 was not that sale made for city scrip, payable in that manner?
A. I really don't remember.
Q. Are you not able by looking at the advertisement, what was returned?
A. Yes, sir; certainly.

Q. Will you refresh your mind and state whether or not the sales which you have referred to were sold for city scrip,
148 which occurred during the war or in that time?

A. Yes, sir; I will.

Q. Do you know what was the value of the city scrip at that time?

A. I can refresh my memory on the subject and ascertain.

Q. In speaking of the sales made after that time, you refer to sales made by one property holder to another?

A. Yes, sir; there have been no general sales made since 1868.

Q. In the sales that you speak of subsequent to that date, you refer to sales made from one owner to another owner, and not the city of New Orleans?

A. Yes, sir.

Q. Do you know anything of the assessments of these squares of ground?

A. I do not. The Liverpool Press runs across Water street, between Erato and Thalia. There the wall is built across Water street.

Q. How is Water street occupied below that railroad?

149 A. There are tracks on it. I cannot say which railroad owns the tracks.

Q. But all the railroads run up; there is the New Orleans Pacific, and the St. Louis, Chicago, and New Orleans railroad.

A. It seems to me they all use them to some extent. The streets are full of rails all about there. They have platforms about Notre Dame street and Julia. There are sheds of the different railroads.

Q. What different railroads do you mean?

A. I don't know how far the Morgan railroad goes up. I suppose the Jackson road and the Chattanooga road go up above.

Q. This square of ground on Canal street, between Custom house, in the vicinity of Canal street, on a line with the squares heretofore described by you as between Delta street and Water street, and being the first square bordering on Canal street, was sold last year to the Crescent City railroad?

A. I don't know it. I do not know that it was sold. I
150 know they occupied it, but I don't know that they own it. I should say that property ought to be worth $6,000 or $7,000 a lot.

Q. The squares that you refer to being as between Canal and Poydras streets, and Delta and the river, is not built upon?

A. No, sir.

Q. It is not occupied except by the tracks running along?

A. It is not occupied except by the railroad tracks, and the storage of cotton coming off the boats and the tracks of the different railroads running there?

Q. The only buildings there are the buildings of the New Orleans and Mobile railroad?

A. My impression is that their building commence up there at Girod street.

Q. Where, at square 27 "A?"

A. Yes, sir; between Girod and Julia, Water and Pilie.

Q. Notre Dame street does not run through?

A. No, sir; they built across Notre Dame street.

151 Q. These are the only squares on which they have any buildings.

A. No real substantial buildings.

Q. Where is the largest commerce of the city for the cotton and western produce, between what limits?

A. I do not think the cotton extends much above Poydras street, and much below Custom-house street; I think the Cincinnati and St. Louis produce boats run from Poydras to Girod.

Q. And uses this space which is marked here?

A. The wharf portion of the river there for landing and receiving freights, and such.

Q. Now below Canal street on the levee are what?

A. A little below Custom-house street commences the sugar down to St. Louis street.

Q. Gravier street does not run any further than Delta, or does it?

A. No, sir.

Re-examined.

By Mr. Miller:

152 Q. Below Calliope street and above Canal, do you know of any railroad company other than the Louisville and Nashville Railroad Company, and the Morgan Louisiana, and Texas Railroad Company that have any buildings on the batture between Delta street and the river?

A. I do not.

Q. Above Calliope street are there any such railroads or corporations which have any buildings upon the batture between the river and Delta street?

A. Yes, sir, quite extensive buildings are up there of the Pacific road, that is from Thalia street up.

Q. How many squares above Calliope street?

A. Three squares; the Jackson railroad owns the property below and above Calliope street—between Calliope and Thalia.

Q. These buildings that are occupied by the Jackson railroad above Calliope street; how are they occupied; by what sort of a title?

A. I have never seen their title; I appraised that property

153 for them upon the hypothesis that they had a title to it;

that is all I know about it; I saw the president about the two squares last year at auction.

Q. What are these two squares?

A. Right in front of the Liverpool press from Mr. Oauvry.

Q. With reference to the railroad track that you speak of above Calliope street, are the tracks on the street?

A. Yes, sir.

Q. Between the river and what streets do they run?

A. There is a multitude of tracks there; I think they extend back to Fulton along the streets.

Q. You mean Fulton and Delta and within the other streets along the river are occupied by the railroad tracks?

A. Yes, sir.

Q. With reference to this sale of property below Canal street of which you have spoken, have you any personal knowledge of that sale?

A. Which sale?

Q. The sale that you have spoken of in your testimony made to the Crescent City Railroad Company.

A. I have no personal knowledge.

154 Q. You don't know that such a sale was made

A. I don't know it; I am satisfied, however, that it was made.

Q. Between Canal and Custom-house and what street is that property?

A. I really could not say.

Q. Was it near the river?

A. It was inside the Chattanooga depot.

Q. Was it vacant property at the time of the sale, or built upon?

A. There were some shanties on it.

Q. It was not within the boundaries of the streets?

A. Yes, sir.

Q. Your impression [is] it was sold to the Crescent City Railroad Company?

A. Yes, sir.

Q. How far in from the river?

A. The railroad depot is between there and the river.

Q. And therefore it was some streets in the rear of the first square?

A. Yes, sir.

Q. In the valuation that you have put upon this ground, between Canal and Calliope streets, is it based upon city scrip or based upon an actual money value?

A. In the estimate I put what I think the property would

155 yield now is based upon the current money of the day; that is, if it is sold on the usual terms—one-third or one-fourth cash and the balance at six per cent. interest.

Q. Have you any knowledge of such sales being made?

A. No, sir; not anything.

Adjourned to Monday, June 4th, 1883, at 12 o'clock m.

NEW ORLEANS, *June* 4th, 1883.

BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY. } No. 10180.

Testimony resumed on behalf of complainant, this day, as per adjournment.

Present: Henry C. Miller, Esq., for the complainant; Thomas L. Bayne, Esq., for the defendant.

Jessie K. Bell, a witness, produced, sworn, and examined on behalf of complainants, says:

By Mr. MILLER:

I am a resident of the city of New Orleans; I am a
156 merchant, carrying on business at the corner of Gravier and Delta streets.

Q. Do you or your firm own any property between Delta and Water street, and between Canal and Gravier street?

A. Yes, sir; I own some property there fronting on Delta street—fronting the levee.

Q. From whom did your firm buy it?

A. One piece I bought from the city.

Q. And the other piece was bought from a private party?

A. No, sir; the whole property Conly & Kennett bought at a city sale, and I became Conly's successor, and took the property.

Q. It is known as batture property, sold by the city?

A. Yes, sir.

Q. How many lots do you own?

A. There are two lots in that piece.

Q. What was the date of the sale?

A. It was some time in 1866, if I recollect right.

Q. What was the price?

A. For that piece, fifty feet front, running back through to Fulton street, was $16,000 or more for the ground.

157 Q. What is the value of that property now; the ground?

A. Well, I do not know; I don't think there was any sold recently in the front; there is no vacant ground there that I know of.

Q. The price you stated is the price of the ground?

A. Yes, sir; the price paid then, $16,000, and more, some hundreds.

Q. Do you know the space of ground between Delta and Water streets, Canal and Poydras streets?

A. That is the property now used as the wharf.

Q. What they use that for is near the river?

A. Yes, sir.

Q. Let me direct your attention to the piece of ground that lies between Delta street and Poydras street, Canal street, and a line which we will suppose to be formed by the continuation of the line of Water street?

A. I know all the ground of which you speak.

Q. What is the value of that space within these bounds?

A. I think it would be almost inestimable; I cannot put a value upon it; it is beyond my comprehension of what it is worth.

158 Q. Suppose that the square between Delta and the prolongation of Water street, Canal, and Poydras streets was sold for building lots, what value would you put upon it, either sold by the square or building lots separately?

A. That would be a very hard question for me to answer. There have been no sales of that kind there, and it would be a very difficult matter to be estimated what that would bring. It possibly might bring the same or more than the property sold for there a few years ago.

Q. If you then value that square within the boundaries I have given you by the price paid by you or your firm for the property in the rear, of which you speak, what would be the value of it in front?

A. It would make a very material difference.

Q. Would it be worth less or more?

A. It would be less, back where I am.

A. The prolongation of Water street would be worth much more than you paid?

159 A. I should think it would—fully as much, at least.

Q. Let me direct your attention to the squares between Poydras and the prolongation of the line of Water street, Lafayette street, and Girod street. That is in the same tier of squares going up above; and I will ask you to state what the value of that property would be at the present time. It is the square marked "Ponchartrain." I am speaking of the ground itself?

A. Well, I don't know what it is worth. I think it is much depressed. Mr. Conery had more dealings there than I had. I should think, shut out from the levee, there would be a serious reduction in the value of the property.

Q. You are, of course, a merchant of this city?

A. Yes, sir.

Q. How long have you done business there?

A. I have done business there since 1866.

Q. You have been engaged in running a steamboat?

A. Once upon a time.

Q. What familiarity have you upon the necessities of
160 commerce on the river front of this city?

A. Well, the necessities are very great. I have been an eye witness to that for many years, ever since I have been in New Orleans, living right in front. The wharf privileges there now for discharging and receiving in commerce is now quite limited. There is not enough room for that.

Q. Take the space of ground between the line of Water street carried down to Canal street, between that line and the river front, and state whether or not that space of ground serves sufficiently for the purposes of commerce?

A. In the business season of the year it is very much cramped.

Q. What, then, would be the effect of enclosing this space between Delta and the projected line of Water street, Canal street, and Poydras street?

A. Well, it would just be simply ruinous to our commerce for places to land our cotton and western produce. The space now is not sufficient.

Q. As that space stands now, that is to say, between Delta street and the river, what streets run through to the river?

161 A. There are Gravier, Poydras, and Canal. These are the three principal commercial cross streets.

Q. If that space between Delta and the projected line of Water street was closed, then, it would block up these streets?

A. Yes, sir. It would cramp them beyond all reason.

Cross-examined.

By Mr. BAYNE:

Q. Gravier street is open to Delta street, is it not?

A. Yes, sir.

Q. All the rest of the space from Delta street—that is, in front of your store—all the rest of the space from Delta street between Canal and Poydras street is an open space?

A. Yes, sir; there are two railroads running in front.

Q. But no buildings upon it?

A. No, sir; no buildings.

Q. And no streets actually running through it?

A. I think they terminate at Delta street; but then there is the street right in front of us; it is Water street, if I recollect right.

Q. Water street when it is laid out?

162 A. It is laid off now.

Q. But it is not used as a street; it is an open space?

A. Yes, sir.

Q. There is no building upon it; there is no division of the street from Poydras street, and this Water street terminates at Poydras street?

A. No, sir; there is no building in the front between Poydras and Canal, in front, but Morgan's depot is above that.

Q. Water street is not extended further than the Liverpool Cotton Press; do you know where that is?

A. Yes, sir.

Q. Where is it?

A. It is a good way up town.

Q. It is above Calliope street?

A. I don't [know] exactly the locality of it; I know it is up there. I am not conversant with it.

Q. It is above St. Joseph street, is it not?

A. I think it is; I cannot state positively.

Q. Do you know that it is above Calliope street?

A. I think it is.

Q. Does not that cotton press occupy the whole space,
163 so that Water street is not prolonged towards Canal street beyond that?

A. I don't know. The Morgan depot is up there, and I think it stops Water street.

Q. The Morgan railroad, which was the Ponchartrain railroad, stops Water street?

A. Well, it stops everything else, and I suppose it stops the street.

Q. Is it not further stopped by the Liverpool Cotton Press, up higher still?

A. That I cannot answer, because I don't know; I am not familiar with it up there.

Q. What would be the effect of selling this square of ground between Canal and Poydras streets, and Delta and the river, which is now an open space for commerce, to private parties, and the construction of buildings upon it; would it injure the commerce of the river or not?

A. Beyond all question, it would; because there is not enough space there now.

Q. That space there now is used for the movement and handling of freight from the river?

A. Yes, sir.

164 Q. You say it is all required for the uses of commerce?

A. Unquestionably, to my knowledge it is.

Q. That landing space between Poydras and canal; is not that landing space used by the boats bringing in cotton?

A. Yes, sir.

Q. Do you know whether or not this place is not diminishing by the abrasion of the river bank there now?

A. No, sir; I don't think it is; if anything it is adding.

Q. All that open space from Girod street to Canal street is required for the use of commerce, is it not?

A. At Girod street it is very little, because the railroads take up too much room there.

Q. But from Morgan's depot to Canal street the whole space is necessary for commerce?

A. Well, there is not space enough now.

Q. If any of the property was put up for sale for private stores it would injure commerce?

A. Yes, sir; it would injure commerce in a very serious way.

165 Q. The space here from Poydras to Canal and Delta to the river is entirely open, except some railroad tracks on it?

A. Yes, sir.

Q. And it is used every day for commerce?

A. Yes, sir, every day; that is the only place there to land freight; in the winter season of the year the largest boats come here, carrying from seven to eight thousand bales of cotton, and they are very much cramped.

Q. Was not that property in 1866 sold for city scrip?

A. It was sold for something that had to be paid; it was some cash and the balance on time, with interest.

Edward Conery, a witness produced, sworn, and examined on behalf of complainants, deposes and says:

I reside in the city of New Orleans; I am a merchant, and do business on Delta street; I have been engaged in commercial business on Delta street for many years.

166 Q. Do you recollect when the city made sales of what is called batture property, between Delta street and Water street below Poydras, and between Delta street and New street, above Girod street; if any such sales were made?

A. Yes, sir.

Q. What year was it?

A. If my memory serves me it was in May, 1866, or June; I cannot say which, but it was in the year 1866.

Q. I refer now to the sales of batture property between Delta street and the river, and not between Delta street and the rear.

A. The front; I bought the corner of Canal and Delta street in 1866.

Q. That was then property between Delta street and the river, or was it not between Delta street and in the rear of Delta street?

A. I don't know of any property outside of Delta street and in front of the river sold; but I do know of sales of property between Delta street and the rear, because when I bought on Delta street I suppose that was the front line from which there

was to be no further building, from the fact that I had
167 been in front for nearly forty years, and I thought it was still in front.

Q. Do you know of the sales of the batture property between Delta street and Front street and Fulton street, and Fulton street and the levee, and between Canal and Poydras streets?

A. I don't know; I know there were sales made but I was not present at the time; I don't know it of my personal knowledge.

Q. Did not yourself or your firm buy a portion of this batture property embraced within the limits described?

A. Yes, sir.

Q. What were the limits of the property you purchased; how do you bound them; by what streets?

A. By Canal, Gravier, Delta, and Front.

Q. When did you make that purchase?

A. In 1866.

Q. From whom did you purchase it?

A. From the city of New Orleans.

Q. How much did you buy at that time?

168 A. I bought the corner of Canal for $19,800, and I bought two adjoining lots for $15,000.

Q. Since 1866 have any buildings been put upon the squares between Delta and Front streets and between Canal and Poydras streets; that is, in the same tier of squares in which you are?

A. Yes, sir; there have been several buildings put up there to my knowledge; Mr. Bell built and Mr. Edwards built there, and, I think, Bostick and Seymour.

Q. What is the condition of that space now, between Delta and Front, Canal and Poydras streets; is it not built upon?

A. I think it is, with the exception of one lot at the corner of Gravier and Delta streets.

Q. And all that building has taken place since 1866, when the city sold the batture lots?

A. Yes, sir.

Q. Direct your attention to the space now between Delta and Water street, above Poydras and below Girod. Is it to your knowledge that any buildings have been put upon these squares since 1866.

169 A. Nothing in front of Delta street, except the depots of the Pontchartrain railroad, which depreciated the property very much. I sold a place there that cost me $14,000 for $6,500, and I was glad to get it.

Q. Have you any knowledge of New street?

A. No, sir.

Q. Have you any knowledge of Pilie street?

A. No, sir; there are several streets up there I never saw, about Poydras street, although I pass by there every day.

Q. Are you familiar with Water street?

A. No, sir; what they term Water street is in front of us; I remember some years ago the railroad parties commenced putting rails down in front; we went to see what it meant; I saw Mr. Bell; I did not know at that time that there was any street in front of us; we went to the City Hall to see Flanders, and Governor Warmouth was there, and some steamboat men was there also, and we found a magnificent plan there to build a depot in front of us; that was the the first we heard of it, and we stopped it.

170 Q. Where the Pontchartrain depot stands, between Poydras and Lafayette, and between Lafayette and Girod, and between Delta and Water streets, does or does not the building of the Pontchartrain railroad depot extend over the line of Water street?

A. Well, I never measured it, but Water street must be a very wide street if it is. The side of the plank of the depot comes to the plank of Delta street; then it extends out some seventy-five feet from Delta street to the edge of the river, consequently it blocks up everything there. The Louisville and Nashville further up blocks the way, and consequently I cannot see any street that can possibly go up there.

Q. What is the obstruction of Water street, spoken of by you, by the depots of the Pontchartrain Railroad Company extends above Girod street?

A. Well, I think the end of the Pontchartrain railroad comes up about the end of Girod street.

Q. Is there any obstruction on the levee beyond that?

A. Then comes the Louisville and Nashville depot.

171 Q. But that ends at Girod street, at the Ponchartrain railroad?

A. Yes, sir; because Girod is open, and has square blocked pavement now to the end of the depot.

Q. At the depot of the Ponchartrain railroad is not Girod street open to the depot?

A. Yes, sir.

Q. Beyond that, is the obstruction caused by the Louisville and [Nashville] Railroad company?

A. Yes, sir; it comes very nigh down to the wood work.

O. What is the distance between Delta street at the point where your store fronts, and the Mississippi river?

A. I should think it was from five to six hundred feet, fully that, that is including the wharf.

Q. The wharves of course extend to the point of the river where the boats come to land?

A. Yes, sir.

Q. What is the length of the wharves?

A. It is probably sixty or seventy feet from the river to where the earth work begin.

Cross-examined.

By Mr. BAYNE:

172 Q. You say when you bought your property on Delta street, that was the front?

A. That was fronting the river. That was my idea of it.

Q. All that space then from Delta street to the river has been used, has it not, for the purpose of commerce, since you bought it?

A. Yes, sir.

Q. Is it, or not, necessary to the use of commerce?

A. It is necessary.

Q. Is not that one of the principal landings for cotton and produce in the city of New Orleans, or is not the principal?

A. It is the principal landing, all our packets land there.

Q. The whole space is absolutely essential for the purposes of commerce?

A. Yes, sir; I think it would be a great hardship, if it was curtailed in any way.

Q. There is nothing on it at present, except the tracks of the railroads?

A. Well, they are not visible, they are covered up, they are under the levee front, or surface. You can see them at the corners of course.

Q. So that commerce is carried on over the line of these tracks in front.

173 A. Yes, sir.

Q. The cotton is handled and hauled over them?

A. Yes, sir; used as on the levee, repaired, and kept in order.

Q. There is actually no street prolonged from Poydras street, to Canal street in front, except Delta?

A. None that we recognize.

Q. Water street has no lines or marks?

A. No, sir; nothing laid off at all, and has not been for years.

Q. It is not really laid out for use as a street at all?

A. No, sir; and never has been, it was always used as a common levee.

Q. Is not all that space above and up to St. Joseph street, where St. Joseph street would terminate on Delta is not that necessary for the use of commerce and the railroads?

A. Yes, sir; it is.

Q. What is the space from the Pontchartrain depot to the river where Morgan's is, as it is now called?

A. Including the wood work, I would conclude from its general appearance a couple of hundred feet.

Q. Then as you go up this space it narrows?

174 A. Yes, sir; as you continue up beyond Morgan's you strike the Louisville and Nashville; that goes closer to the river.

Q. Then the Chicago, St. Louis and New Orleans railroad?

A. Yes, sir; they all keep narrowing up along the river as you go up; there is just a narrow road or passage up there.

Q. You say all property above Girod street sells for a much less price?

A. Yes, sir; it has depreciated very much; I bought a store there for $3,500 on Delta, between Lafayette and Poydras, and the lot cost over $14,000; I bought it for $3,500, showing the depreciation caused by these depots being built in front of them.

Q. You have spoken of the value of some of this property; in speaking of it you mean the price when you acquired it in full ownership?

A. Yes, sir.

Q. Suppose a property was involved in litigation and a judgment of a court had been rendered against it, that goes
175 up on appeal, and you were coming merely to settle the question of that litigation, would you not take much less than you would if you were buying the property right out?

A. Well, with a law suit hanging over it I would get out of it the cheapest way I could.

Q. As a business man, you would compromise a law suit on as cheap terms as you can?

A. Yes, sir; two dollars for peace and one for war.

Re-examined.

By Mr. MILLER:

Q. What has caused the depreciation of this batture property between Delta street and the river, as well as between Delta and the rear streets?

A. Well, the principal cause—my opinion of the rear streets is the building up in front of them, the streets being in a dilapidated condition and improvements overlooked on these streets to some extent.

Q. Does the blocking up of the streets by the railroad depots have any effect?

A. Yes, sir; a very great effect, and that is one.

176 Q. If you were called upon to show the depreciation of these batture lots by the construction of the railroad depots, what would you say is the principal cause?

A. Well, there is no doubt the railroads in front done some little injury to all property there, but the biggest business is at my neighborhood and Mr. Bell's; we do not feel it; but for a stranger to come out there for transient business, I think it would have a very serious effect on him.

Q. Above Girod street and between Front street and the river, has there been any depreciation of property up there?

A. Since these depots have been built there, very great.

Q. Is not that caused by the depots?

A. Yes, sir.

Q. What effect has the closing of the streets up have upon the value of the property?

A. I am not familiar with the business up there to give expression, but I think it would have a very serious effect on the property if it came nigher to our business.

177 Q. When you bought your property in 1866, do you recollect whether you bought with reference?

A. I thought I was still in front; if I had any idea there was another street in front of us, I would not have invested so much.

By Mr. BAYNE, for defendant:

Q. Would not the property in front of you be very much more depreciated by the construction of private stores and buildings upon it than by the railroad tracks which now run along it?

A. Yes, sir; for the same reason that it has injured the property behind.

Q. I understand you to say, then, that what depreciates the property is the construction of other buildings upon the front?

A. Yes, sir.

Q. To plans submitted to you of these lots?

A. I think I did; I was not present when the sales took place; I had an agent here at the time.

178 Q. Do you recollect whether or not that plan Water street was exhibited and projected down to Canal street?

A. I never heard of any Water street untill the last few years, when it was contemplated a depot was to be built in front of us.

Q. But can you state whether Water street was exhibited on the plan on which you bought it?

A. I do not remember, because I was in the front; I was in the front thirty years.

Q. And that there is more depreciation in the construction of stores and other buildings than there would be by the mere construction of railroad tracks?

A. Yes, sir; when the Morgan railroad track was first started, many of our citizens called on us to assist in getting out an injunction; that was going to be within twelve feet of out door; and I objected to joining in the injunction to prevent the track from going by, as I wanted to see commerce moving, as instead of having to dray the goods they would be delivered at our door.

179 Q. Then I will ask you is not the Morgan Louisiana and Texas railroad track on the square in front of your and Mr. Bell's store?

A. Yes, sir.

Q. The square between Canal street and Poydras; Delta street and the river?

A. Yes, sir; so is the Louisville and Nashville; I did not object to moving the track, leaving the property inside alone by the Morgan track, and when the other road came to put their track I did not object, for I said if one track was already there, I could not see any injury going to result from the second one, and it would relieve the levee of the commerce, as there would be no obstruction from the trains there.

Q. In speaking of the distance from Delta street to the river you included the planking which is put over the water as a wharf?

A. Yes, sir.

Q. You say that is from sixty to seventy feet?

A. Sixty, seventy-five, or probably a hundred feet from the water's edge.

180 Q. Leaving, then, of land between the line of the wharf and Delta street about what?

A. Well, may be three hundred and fifty feet.

Q. And all that land and wharf, you say, is used daily for the purposes of commerce?

A. Yes, sir; and at certain seasons of the year it really has encroached upon the street sometimes.

Q. The railroad tracks laid down there do not materially interferes with commerce?

A. No, sir; they are in the centre of the streets. There is only one objection I find, and that is, puffing the smoke into our store.

By Mr. MILLER:

Q. What would be the effect upon the value of your property and Mr. Bell's if the Louisville and Nashville Railroad Company were to locate a passenger depot extending along the space from Canal to Poydras streets and between Water street and the river?

181 A. I think it would have a very depreciating effect. I think it would be much more in my neighborhood, because we have the Canal street front.

Jesse K. Bell, recalled by Mr. Miller, makes the same statement with reference to putting up of this passenger depot; that it would be simply ruinous to our property and detrimental to the commerce of our city—it would be absolutely ruinous.

E. L. Bower, a witness produced, sworn, and examined on behalf of complainants, says—

By Mr. MILLER:

I am the principal clerk in the mayor's office. I am familiar

with the city ordinances, and have had that familiarity for thirty years back.

Q. How have you a knowledge of any rights granted by the city of New Orleans to corporations to enclose and occupy any batture lots?

A. I have none, unless in the instance of this passenger
182 concern on this neutral ground, the depot of the Louisville and Nashville railroad; that is, below Canal street. That was done in consideration of a great quantity of paving to be done.

Q. Above Canal street you have no knowledge of any such rights?

A. No, sir.

Q. Where is the depot that you speak of; give the boundaries of the streets?

A. The use and occupancy of a piece of ground, north side of Canal street, eighty feet wide on Canal street, and two hundred and sixty feet towards Custom-house street, for a passenger depot, to be built by said company as per plan; use for thirty years, with privilege of renewal.

Q. When was that granted?

A. Granted on April 19th, 1881.

Q. Now, with respect to the rights to their wharves extending into the river; do you know any grant of that character to corporations or individuals?

A. Yes, sir; there have been granted rights of that
183 character; grants to elevators, grants to certain lines of steamships; and grants to the Pacific railway.

Q. But these grants of which you speak were confined to the use of the wharves?

A. Yes, sir.

Q. It did not go the extent of giving the right to occupy batture property or squares?

A. No, sir; it did not.

Q. When were the first sales of batture property made by the city of New Orleans?

A. May 11th, 1866, was the first that I know of.

Q. Will you give the limits of the batture property sold at that time; between what streets?

A. I don't remember that exactly; it is only a few days since I ran over them, but I cannot recollect them.

Q. Were they in the front at Delta street?

A. No, sir; not in front of Delta street; they were between Canal street and several streets above; they were sold under a lithographic plan; sold for one-fifth cash and the balance in four or five years.

184 Q. What date were these sales made?

A. May 11th, 1866; they were sold by lithographic plans; McCeran made the sale.

Q. Is that lithographic plan in existence?

A. I don't know, the sale was made under Ordinance 47, new series.

Complainants offer in evidence Ordinance No. 47 in this connection.

Q. What were the next sales of batture property to your knowledge?

A. I don't remember.

Cross-examined.

By Mr. BAYNE:

Q. Do you remember the Morgan railroad, and the building on the square in front of Jackson square and this side of the river, is not that occupied by Morgan?

Complainants object to all evidence with reference to the condition of the battures below Canal street, and as to the character of the constructions, if any upon it, as they have no re-
185 lation to this case.

Q. Has that been constructed within the last two years?

A. Yes, sir, by the Morgan Railroad Company; I presume it must have been done under some ordinance of the city; it is a long ordinance; it is some time since I read it over.

Q. It is [a] large building?

A. Yes, sir; a large frame building.

Q. Of what length?

A. I don't know; it is, I suppose, a hundred feet.

Q. And the width forty or fifty feet?

A. Well, I expect it is from thirty to fifty feet.

Q. Do you know whether or not above Canal street that grants have not been made to the Pacific railroad to occupy certain fronts of the river?

A. They have the right of way there for frontage on the river side of the park. I will read from the ordinance:

"To enclose and occupy for its purposes and uses that portion of the levee, batture, and wharf, in the city of New Or-
186 leans, in front of its riparian property acquired, or to be acquired, between Thalia and Tchoupitoulas street, and to erect and maintain thereon, at its own expense, such ferry facilities, wharves, piers, warehouses, elevators, yards, tracks, depots, stations, sheds, and other structures as shall be necessary or convenient for transfer of cars, engines, passengers, and freight, and in the transactions of its business."

Q. Is not the city recently making grants to various railroad

companies or other corporations from day to day, and has it not done so for the last ten years?

A. Yes, sir; rights of way.

Q. And franchises to railroads?

A. Yes, sir; certain franchises to railroads.

Q. And elevator companies?

A. Yes, sir; rights of way through the city, and rights to the elevator company, for handling grain, wharf privileges, and grants.

Q. Is not the city of New Orleans in the ordinary transaction of its business from day to day, making similar grants?

187 A. Yes, sir.

Q. Has not the city of New Orleans been in the full exercise of its corporate power since 1880?

A. Yes, sir.

Q. Is it not dealing with these subjects precisely as they dealt with them fifteen or twenty years ago?

A. That I don't know; she has given away pretty much all that she had to give.

Re-examined.

By Mr. Miller:

Q. Under the act of 1870, the Legislature undertakes to grant to the Louisville and Nashville Railroad Company, or its predecessors, the right to locate a passenger depot on the space of ground between Poydras and Canal, and between Water street and a line one hundred and fifty feet east from Water street, can you recall any ordinance of the city of New Orleans, making any such grant to any corporation, or individual?

A. No, sir.

Q. Has the city of New Orleans in the exercise of its corporate power made such a grant?

188 A. No, sir.

Q. Under the same act of 1870, the Legislature undertakes to grant to the New Orleans, Mobile and Chattanooga Railroad Company, the predecessor of the Louisville and Nashville Railroad Company, the right to construct a freight depot, and other buildings necessary for its business, upon the space of ground between Girod, Calliope, Water street, and a line two hundred and ninety feet from Water street, carrying the right to block up the streets, and a portion of the public levee, within the named boundaries. In your experience, can you recall such a grant being made by the city of New Orleans, to any corporation or individual?

A. No, sir; I cannot.

Q. All these franchises of which you speak, will you please describe their nature; whether they were to use the public streets

for railroad tracks, or whether to use a portion of the river front for elevator purposes, or any other nature, which you
189 know of?

A. All these grants to the railroads have been the right of way; to pass through streets; carry passengers and freight if necessary; and, I suppose, the right to construct such buildings as was necessary to carry out their purposes, provided they did so upon their own property.

Q. And, in every instance where such francises have been granted, there are ordinances up there exhibiting their nature?

A. Yes, sir.

Q. These ordinances can be furnished?

A. Yes, sir.

By Mr. BAYNE:

Q. Are you not aware of the grants made by the city of New Orleans, in the ordinance to the New Orleans, Mobile and Chattanooga railroad, made in November, 1867; do you not know grants were made then?

A. I know certain rights were granted to the Chatta-
190 nooga Railroad Company, such as the right of passing through the city. There were ordinances giving them these rights.

Q. Do you know of an ordinance within the last year to the New Orleans and North Eastern Railroad Company with reference to the people's canal and all that region there?

A. Yes, sir.

Q. Has there not been several ordinances in which rights and franchises have been sold or leased to different corporations in the city?

A. Yes, sir.

Q. These sales have been made by the city for a certain price?

A. Yes, sir; for certain periods.

By Mr. MILLER:

Q. Will you produce the ordinances to which you refer?

A. Yes, sir; I will.

Joseph H. Oglesby, a witness, produced, sworn and examined, for complainant, says: I am President of the Board of Liqui-
191 dation of the city bonded debt. The Board was organized in April, 1880, under act No. 133 of that year. The Board is composed of three members of the city government, and six citizens appointed under the act, to wit: Joseph H. Oglesby, John Phelps, A. J. Gomila, E. A. Palfrey, Henry Gardes, S. H. Kennedy.

Q. What assets of the city of New Orleans, other than the

funds derived from taxation, has the Board of Liquidation handled, received, or collected, in any way under the act, and what application has the board made of such fund?

A. We received no money from other sources, except the sale of certain railroad franchises, notably the last one we received was the franchise of the St. Charles Street Railroad Company.

Q. And other railroads I suppose?

A. And other railroads. The money received from these scources have been applied to the purchase and cancellation
192 of the city debt, known as the premium-bond debt. We have retired since the organization of this Board somewhere between seven and eight hundred thousand dollars of the city bonded debt.

Q. With the proceeds of the franchises?

A. Yes, sir; with the proceeds of the franchises.

Q. You say that the Board has handled no other assets, except taxation, other than from the sale of the franchises?

A. Yes, sir; I know of no other than that.

Q. Why is it that the Board handled no property of the city not dedicated to public uses, other than railroad franchises?

A. For the reason that the city sees it proper to conceal from seizure by judgment creditors; and if it were to come into possession of property before we could sell it, it would be seized under execution and sold to satisfy some existing judgments. Therefore, we have no other resources to retire the city bonded debt than this already mentioned.

Q. If the financial embarassments of the city that you
193 state, which you speak of, had been removed, what application could the Board make of city property not dedicated to public uses?

A. I should favor the application of all such assets to reducing the bonded debt, while it can be bought at such a large rate of discount as exists at present.

Q. Has the Board in contemplation that policy?

A. That is the settled policy of the Board.

Cross-examined.

By Mr. BAYNE:

Q. No bonds were ever issued under the act No. 133 of 1880?

A. No, sir; there has been no issue of bonds. We are now issuing bonds, only extending the old bonds, but none under the act of 1880.

Q. Now, is it not a fact that that act was a failure because it proposed to reduce the debt to fifty cents on the dollar, and tied the hands of the syndicate?

A. To a certain extent. It forbid the syndicate from retiring any debts less than fifty per cent., and no bonds were issued under the act of 1880.

Q. Mr. Wolfe has testified that the first bonds extended
194 under the act of 1882 was on the 12th of November, I think?

A. I cannot state the date.

Q. You say franchises and taxes were the only property you handled?

A. That is the only assets we handled, as a syndicate, taxation for the interest and such franchises as we realize money from.

Q. Do you know which roads; you remember the St. Charles?

A. I have in my mind notably the St. Charles street railroad.

Q. Do you remember any other?

A. No, sir; not at this moment.

Q. The St. Charles street franchise was granted for a certain sum; about $350,000?

A. The St. Charles street franchise was extended for $300,000.

Q. Did not the city retain a part of that?

A. The city retained $20,000, against the protest of the syndicate, and under a promise to restore the $20,000 to the syndicate that was then retained.

Q. This sum was handed over to you by the city, $280,000?

A. We received from the city on account of that franchise, $280,000.

195 Q. Do you remember any other franchise?

A. No, sir; not that I remember; nothing just now.

By Mr. MILLER:

Q. Did the city authorities simply keep this $20,000 of their own will, or did the board assent to it in any way?

A. We did not assent; we thought it best to take the $280,000 and take their promise for the rest in the future.

Q. Then the city owes the Board of Liquidation $20,000 on that franchise?

A. Yes, sir.

The examination was here adjourned to Wednesday, June 6th, 1883, at one o'clock p. m.

NEW ORLEANS, *June 6th*, 1883.

THE BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY. } No. 10180.

Testimony for complainants resumed this day as per adjournment.

196 Present: Henry C. Miller, Esq., for complainants; Thomas L. Bayne, Esq., for defendants.

Nicholas J. Hoey, a witness for complainant, recalled.

By Mr. MILLER:

Question. In your previous examination you made some reference to the specifications and plans by which the batture property of this city from Canal to Calliope street was sold, in 1868?

A. From Poydras to Calliope.

Witness now produces the plans referred to of the sale made in 1868, which embrace the limits between St. Joseph and Poydras streets, and from Front street down to New street, as shown by this map, which shows that New street does not extend below Notre Dame. The map produced was made by William H. Bell, December 16, 1867, and is now filed by the complainants and marked "B."

Q. Now then about the conditions of the sale. Do you recollect on what terms the property was sold?

A. Yes, sir; it is recited on the frontispiece. One third of the entire price of adjudication in cash, payable at the option
197 of the purchasers in city notes, and for the balance a credit of one and two years on the notes of the purchasers drawn to their own order, and by them endorsed payable in equal instalments.

Complainants now offer in connection with the above, the resolution of the common Council of the city of New Orleans, made December 16, 1867, on which such sales were made.

Q. The sales were made under the resolution on the paper which you now produce?

A. Yes, sir, they were.

The resolution is as follows:

Mayorality of New Orleans, City Hall, December 16, 1867.

Resolved, That all property real or personal, belonging to the city of New Orleans, which can be disposed of without detriment to the public interest or convenience shall be sold under the supervision and direction of the chairman of the finance committees; the sale to commence on the third Monday of January, 1868, and to be continued from time to time at the discretion of
198 chairman of the committees.

Resolved, That the terms of said sale shall be one-third cash, payable in city notes, and the balance in notes of equal amount secured by mortgage on the property, payable in one and two years with interest.

Q. Now, at that sale was there any adjudication made of the squares between Pilie street and the street in front of Pilie street, Julia street, and St. Joseph street? If so, state to whom it was made, for what price, and if ever complied with.

A. The upper half of it, ten lots, were sold to Mr. James McCloskey for $23,500.

Q. Was it ever complied with?

A. To the best of my knowledge and belief it was. We sold it afterwards to the railroad company. The adjudication was complied with. It was adjudicated at that sale to McCloskey, and was afterwards purchased by the New Orleans, Mobile and Chattanooga Railroad Company, and is owned by the railroad company now.

199 Q. What was the price at which it was adjudicated then?

A. $23,500.

Q. In your last testimony here, some days ago, in relation to some batture property below Canal street, you spoke; will you state, if you have knowledge, what that sale was, and what was the price?

A. Here is the plan. It is a portion of ground bounded by Canal, Crossman, Wells, and Delta streets. The portion measures 44 feet 3 inches and 5 lines on Crossman street, 79 feet 1 inch and four lines on Canal street, 134 feet 8 inches on Wells street, and 148 feet 1 inch and four lines on Delta street, and was sold by B. Salvy to the Crescent City Railroad Company on the 8th day of October, 1881, for $20,000 cash, and it has an area of about 2½ lots of ground.

Q. That property lies between Delta street and the street in the front, or in the rear?

A. The street in the rear, Delta and Wells. It fronts the Mobile railroad passenger depot.

200 Q. Does the property in that locality possess a greater or less value than the property above Canal street on the batture?

A. A less value.

By Mr. BAYNE:

Q. This property, you say, is immediately opposite the passenger depot of the New Orleans, Mobile, or the Louisville and Nashville railroad?

A. Yes, sir.

Q. Their depot is between what streets?

A. Between Delta street and the levee.

Q. And Canal and Crossman?

A. Yes, sir.

Q. It is occupied under an ordinance of the city of New Orleans?

A. Yes, sir.

Q. All of your testimony has been given with reference to the purchase or sale of property with an absolute title?

A. Of course.

Q. And not with reference to any question of compromise for the use of the property for any length of time?

A. No, sir; my estimates are based upon sales of property outright.

Q. And with a good title?

201 A. Yes, sir.

Q. If you had to deal with the question of a lawsuit, the mere compromise of a lawsuit, in which the use of the property only was involved, would your estimates be anything like what they are here?

A. Well, I should have to get my judgment to work about the success of the lawsuit; I would perhaps be influenced by an attorney's opinion as to whether the lawsuit was a good or a bad one.

Q. If the lawsuit was a bad one you would sell out very cheap; if a good one, at a great deal more?

A. Yes, sir; that is natural.

Q. You say that was a sale of property between Poydras and St. Joseph streets?

A. Yes, sir.

Q. As indicated by this map "B?"

A. Yes, sir.

Q. Then the square 26 A being on the map B, if it were between Water, Pilie, Julia, and Notre Dame streets was not sold?

A. Square 26 A was sold to the Julia Street Railroad

202 Company for $32,000 on that date, and was afterwards bought by the New Orleans, Mobile and Chattanooga Railroad Company, and is now owned by that railroad company.

Q. Square 27 A was not sold at that sale?

A. No, sir; I am certain it was not.

Q. The square 27 A was not sold as shown by this map B; it was not laid out, that is, the square now occupied by the New Orleans, Mobile and Texas, or the Louisville and Nashville Railroad Company, for its freight depot?

A. Yes, sir.

Q. And Notre Dame street does not extend beyond Water street towards the river?

A. No, sir.

Q. Square 27 A is between Water, Pilie, Girod, and what would be Notre Dame street if extended towards the river?

A. Yes, sir.

Q. There have been no sales by the city of New Orleans since 1868 of any other batture property?

A. No, sir.

203 Q. The space, then, between Poydras and Girod streets, up to the Pontchartrain depot, is occupied as the levee?

A. East of Water street; yes, sir.

Q. Delta is the front street occupied between Lafayette and Poydras?

A. Yes, sir.

Q. That is true, also, up to Girod street?

A. Yes, sir, from Water street east.

Q. Then from Poydras street down to Canal, Delta is the front street?

A. Yes, sir.

Q. And all the space from Delta street to the river is occupied by the levee, and used for commerce?

A. Yes, sir.

Q. Do you know the value of city notes at that time, how depreciated they were?

A. The large notes were sold at twelve per cent. discount, and small notes were sold at four per cent. discount.

By Mr. MILLER:

Q. Besides the map marked B, to which you have referred, as the battures sold in 1868, there were other squares sold
204 at the same time which are shown by these other maps?

A. Only one, and that is the upper half of the square between St. Joseph, Pilie, Julia, and New streets.

Q. That was then sold to some party and afterwards purchased by the New Orleans, Mobile and Chattanooga Railroad Company?

A. Yes, sir.

Q. And is now owned by the New Orleans, Mobile and Chattanooga railroad by purchase?

A. The lower half of the square, between Julia, St. Joseph, Pilie and New streets, the square between Pilie, New, Julia and Notre Dame, the square between Pilie, New, Notre Dame and Girod streets, were not sold at that sale, and never have been sold.

Q. Were or were not these squares laid out at that time?

A. I don't think they were.

Louis H. Pilie, for complainants, recalled and examined.

By Mr. MILLER:

Q. Have you any knowledge of any plan made by W. H.
205 Bell, city surveyor, on or about the 7th of December, 1867, exhibiting the batture property between Calliope, Canal, Delta, and New streets?

A. Yes, sir.

Q. Will you now furnish the map; is this the plan?

A. Yes, sir.

Witness now produces the plan made by W. H. Bell, city surveyor, in 1867, exhibiting all this batture property; the plan

marked "B" being a part of the plan referred to by Mr. Hoey in his testimony.

Complainants now offer in evidence the plan marked W. H. Bell in signature.

Q. The plan to which you now refer as made by Mr. Bell is the same plan referred to by Mr. Hoey in his testimony marked "B?"

A. Yes, sir.

Q. What was the purpose and object for which that plan was made; was it in connection with the sale of the property at that time?

A. That plan of Bell was made in connection with the sale of said property at that time.

Q. And the sales were made under that plan?

206 A. Yes, sir; as I stated.

Q. When you were last on the stand the plan marked "A" was handed back to you with the request to make certain delineations; that is to say, an exhibition of the line one hundred and fifty feet from the line two hundred and ninety feet?

A. Yes, sir; they are made here.

Witness now produces the map on which the delineations were made. Plan marked "A."

Q. The square "27 A" on this plan here—was that made out as a square?

A. It was laid out in 1866, when I was city surveyor.

Q. It does not appear to be exhibited on the plan of Bell in 1867?

A. No, sir. Bell only made the plan of the square offered for sale; but in 1866 the plan of all the batture property, not only from Calliope to Canal street, but above Calliope street, was made by me as city surveyor, and submitted and adopted by the council to lay out the batture into squares and lots

Q. At that time the square 27 A was laid out on this plan of which you speak?

207 A. Yes, sir. All the squares were laid out to Pilie street.

Q. With reference to the square between Pilie and New streets, as exhibited on the map marked "D;" when was that square laid out?

A. They are all laid out on that plan.

Q. When were they laid out?

A. They are not yet laid out.

Q. This space between Pilie and New streets, Julia and Girod, never has been laid out into squares and put in the plan of the city?

A. No, sir.

Q. Then the squares above Julia street and east of New street, extending back as far as on the plan marked "A," are laid out in Bell's plan of 1867?

A. Yes, sir; they were laid out before that. They were laid out already in 1867 and 1868.

Q. The space between Water street and the river below Girod is an open space?

A. It is the levee and an open space.

Q. How far does Water street extend down?

208 A. Water street extends to Poydras street.

Q. Is it projected in any way beyond that exhibited by the plan?

A. No, sir; not even by the plan.

Q. How then is it that the square between Poydras and Canal and between Delta and Water street is exhibited on this map as square "A"?

A. It is only indicated on this plan, because it was a grant by the act 81 of 1870; all that space was reserved for the cotton landing, and was used then and is used now as the cotton landing.

Q. The plan marked "A" that you now exhibit shows the batture property extending from New street to Fulton street?

A. Yes, sir.

Q. Will you please name the streets constituting the batture—streets in the rear of Fulton street going back to the line of 1821?

A. The first street after Fulton going back is Peter street.

Q. Did it bear any other name in old times?

A. Yes, sir, New Levee street; then came Common street, the Tchoupitoulas.

209 Q. So then, the plan in evidence and the statement which you now make exhibits the line boundaries of all the batture property from 1820 to the present time?

A. Yes, sir.

Q. And the present condition of them as well?

A. Yes, sir.

Cross-examined.

By Mr. BAYNE:

Q. In 1868 and 1869, state what was used as the levee?

A. In 1868 all that space of ground comprised between Delta street and the rear; Canal and Girod streets was used as a levee above Girard street to Calliope street, all the space of ground between Pilie, Water, Calliope, and Girod street, extending towards the river was used as a levee.

Q. The whole of it then from Calliope street down to Girod street, and then at Girod it receded to Delta street, and from Delta to Canal?

A. Yes, sir.

Q. That continued until about 1870, when the spaces occupied as the yard of the L. and N. R. R. between Calliope and
210 St. Joseph street were occupied?

A. Yes, sir.

Q. They were never laid out and occupied?

A. No, sir.

Q. Their occupation extended to where?

A. To the line C D on the map.

Q. Being the portion of the ground acquired from the heirs of Sarpy and Burthe?

A. Yes, sir.

Q. The portion of ground between St. Joseph street, Julia, Pilie streets, and the river was occupied by the yard of the L and N?

A. The upper half having been purchased by them from the city and the lower half occupied under a grant from the Legislature of 1870.

Q. At the time of their occupation and use in 1870, it was the public levee?

A. It was the public levee.

Q. All of that land from Julia street to Girod, and from Pilie to the river, as heretofore stated by you, was also a portion of the levee?

A. Yes, sir; and is still a portion of the levee.

211 Q. And is made use of for commerce at the present moment?

A. Yes, sir.

Q. There are merely some railroad tracks?

A. The railroad tracks of the Louisville and Nashville, crossing the last mentioned part of the land, the upper part.

Q. All of the property then which appears on this map "A," between Calliope street, Julia, Pilie, and the river, was in 1869 and 1870, until it was used by the railroad, a public levee?

A. It was.

Q. And has continued outside of this use, for a public levee, now, except for the purposes of the railroad?

A. Yes, sir; and can be used as a levee from New street towards the river now.

Q. From Julia street to Girod all of the space of ground between Julia and Girod and Pilie and the river is used for commerce and occupied as a levee?

A. Yes, sir.

Q. All open and used for the purposes of commerce?

212 A. Yes, sir, all open and used for the purposes of public commerce, except where the tracks of the railroad pass.

Q. Those tracks of the railroad running along the ground be-

tween Poydras street and Canal and Delta street and the levee are on a level with the surface or a little below the surface?

A. It is on a level with the surface of the levee.

Q. Being thus level it is used, going over the tracks, for commerce?

A. Yes, sir.

Q. The Morgan Louisiana and Texas railroad has one track?

A. No, sir, the Morgan Louisiana and Texas railroad is in the middle of Delta street down to Canal, and not on the levee. Their platform is on Julia street, and from there to Canal is through Delta street. The tracts of the Louisville and Nashville runs in a curve from Delta street outside of the Morgan Lonisiana and Texas railroad to the middle of Water street
213 and then runs up to their depot. They branch off also from Lafayette street and take Pilie street through the levee. Again, they branch from above Notre Dame street and take New street and the levee, and come to their wharf. The Chicago and St. Louis railroad is above Garonie street.

Q. On this map marked "A" where would the present location of the Louisville and Nashville passenger depot be?

A. I have marked it on the map "A;" it is between Delta—between Canal and Custom-house, and running from Delta street eighty feet towards the river.

By Mr. MILLER:

Q. When you use the term "levee" I suppose you mean the open space between the street and the river?

A. Yes, sir.

Q. So, then, in speaking of the levee above Julia street which extends to Calliope street the levee extends over New street, although New street is not laid down on the map?

A. Yes, sir; it extends from New street to the river; I say that the levee between Calliope street and Julia street ex-
214 tends now from New street to the levee.

Q. But in 1870 or 1871?

A. In 1871 it extended from Pilie street to the river.

Q. Below Julia street to Girod the levee extends, from what point?

A. The levee extends from Pilie street to the river.

Q. Below Girod to Poydras street, the levee extends from where?

A. From Water street to the river.

Q. And below Poydras to Canal street, from Delta to the river?

A. Yes, sir; below that, from Delta to the river.

Q. In other words since the levee was laid out as exhibited by the map "A" it is exhibited on the map according to your present testimony?

A. Yes, sir; at present, but not before 1870.

A. C. Hutchinson, a witness produced, sworn and examined on behalf of complainants, says:

By Mr. MILLER:

I am connected with Morgan's Louisiana and Texas Railroad and have been for the last thirty years.

215 Q. What has been the title of it?

A. Morgan's Louisiana and Texas Railroad and Steamship Company.

Q. Does the Morgan Louisiana and Texas railroad own any property between Girod and St. Joseph, and Water and Pilie streets?

A. They own the square between Notre Dame and Girod, and between Water and Pilie streets.

Q. When did they buy that square?

A. I am not sure, but I think in 1869.

Q. What price did the company pay for it?

A. We paid $25,000 for that square.

Q. Now go on and indicate the square they bought?

A. The square between Girod and Lafayette, Water and Delta streets.

Q. When was that square bought?

A. I think about 1867.

Q. What price did you pay for it?

A. We paid $60,000 for that square.

Q. Now, then, the square between Lafayette and Poydras, Delta and Water streets?

A. We owned the square between Lafayette and Poy-

216 dras, and Delta and Water streets.

Q. What price did you pay for that?

A. $70,000.

Q. When was that sale made?

A. I think in 1867, they were bought from the city.

Q. They all belonged to what railroad?

A. They were bought by the Pontchartrain Railroad Company at that time.

Q. That is the predecessor of the Morgan Louisiana and Texas railroad?

A. No, sir; but they were consolidated afterwards.

Q. That is to say, the Pontchartrain railroad was afterwards consolidated with the Morgan Louisiana and Texas railroad—that part of it above here?

A. Yes, sir; the extension from Elysian Fields street up.

Q. Was the Morgan Louisiana and Texas railroad authorized by legislative transfer to own the property you have described?

A. Yes, sir.

Q. Describe the square 27 A, running between Notre

217 Dame, Girod, Water, and Pilie streets. Have you any

knowledge of any other purchase having been made than the Morgan Louisiana and Texas railroad of that square?

A. We had an ordinance passed by the city council for that square and batture rights.

Q. When was that ordinance passed?

A. I don't know exactly, but I think some time in 1869 or 1870.

Q. What price did you propose to pay for that at that time?

A. I think $54,000 for the square and batture rights.

Q. Was that in full title to the property, or the mere use of it?

A. It was for the square and the batture rights.

Q. Was the valuation of the square at that time according to your judgment?

A. The square itself?

Q. Yes.

A. No, sir; the square itself was not worth that, but we had bought the next square.

Q. What was the value of the square at that time?

218 A. Well, I cannot tell you; it was worth more than this square, because it was nearer the river; that is, square 27 A was worth more than the square immediately in its rear—there where the company purchased.

Q. Was any offer made by any other party at that time for that square to your knowledge?

A. Not at that time.

Q. Well, at any time subseqent?

A. Afterwards Mr. Raynor made an offer to the city; I don't know whether Mr. Raynor's offer was for the entire square; at the time he made the offer they had a depot built on that square, or half of the single square, 27 A; at that time his road had that depot on it.

Q. How came his road to have the depot on that square?

A. It was placed there sometime previous to the offer, although it was not there when our ordinance was passed; the square was vacant when our ordinance was passed.

Q. And afterwards you put a depot there?

A. Yes, sir.

219 Q. Was that in 1869, or when?

A. I think it was later than that.

Q. Somewhere in 1870?

A. I think so.

Q. You don't know whether Mr. Raynor's offer embraced the full ownership of the square and batture rights?

A. No, sir; the ordinance was made in reference to our bid; Mr. Raynor told me himself.

Q. Who was Mr. Raynor?

A. The president of the New Orleans, Mobile and Chattanooga Railroad Company.

Q. Do you remember what he offered?
A. $108,000.
Q. You refer to the square in the rear, purchased by that company from Delta to Front, and Notre Dame to Girod street?
A, Yes, sir.
Q. What did you give for the square?
A. $20,000.
Q. When was that sale—about the time as the square between Girod and Notre Dame—about 1869?
220 A. Yes, sir.
Q. Do you know New street?
A. Yes, sir.
Q. From what point to what point does it extend?
A. I only know the opening of it as it as it comes in on the batture here. I don't know exactly where it ends above.
Q. How far does it extend, so far as you know?
A. When our steamers lay there it reached in front of them. Our steamers lay in front of St. Joseph street all the way from Calliope street to Julia, and this street was open that time, here.
Q. From what point to what point was it open?
A. It was open above Calliope and below Calliope street.
Q. You knew it then as a street?
A. Yes, sir.
Q. Take New street; have you any other [knowledge] than that afforded by the plan about it?
A. I shall say this, that, while our steamers were laying between Calliope and St. Joseph streets, not knowing of the existence of New street, we put freights upon it from our
221 steamers, and the authorities made us remove the freight because it was a street. That was the first indication that I had that it was a street.
Q. That was when?
A. I think our steamers was removed from there when the injunction was placed upon that wharf—about 1870.
Q. Now, Pilie street. Have you any knowledge of Pilie street?
A. I know there is such a street.
Q. It extends from what point?
A. It runs in front of the batture in front of the Louisville and Nashville depot down to Girod street.
Q. Take the square of ground exhibited on the map "A," between Pilie and New street, Calliope, and St. Joseph street—is or is not that space of ground enclosed?
A. I cannot say; I have not been there for some time; I know Pilie street is open now. There is a building on that square, but whether it is closed all the way around or not I don't know.
Q. The square between Pilie and New streets, St. Joseph and Julia streets—have you any knowledge whether that
222 square is enclosed or not?

A. No, sir; I have no knowledge at present.
Q. Was it ever closed?
A. I don't know.
Q' The square between Pilie and Water, Julia and St. Joseph streets—have you any knowledge of that being enclosed?
A. Yes, sir; that is enclosed.
Q. Now, take the square between Julia, Girod, Pilie, and Water streets, which are delineated on the map "A" as 26 A, and 27 A, have you any knowledge of that square being closed?
A. Yes, sir; the freight depot is on that square, 26 A and 27 A.
Q. That entire square is enclosed?
A. I am not prepared to say the entire square, there may be an angle of it, but it is covered from Girod to Julia streets, and from Water street to some point near Pilie street, although I cannot say positively where it is; but practically it is all closed.

223 Q. Take the square between Pilie and the prolongation of New street, and between Girod street and Julia street.

A. That is not enclosed.
Q. On this map there is delineated the Morgan Louisiana and Texas Railroad, and railroad depot between the squares, Girod, Poydras, Delta, and Water streets; that depot stands upon the squares?
A. Yes, sir; there is a street running down there.
Q. Is it or not a fact that these squares encroach upon the line of Water street, or upon the line of Delta street?
A. No, sir; they do not encroach on either.
Q. They leave the streets open on each side?
A. They leave the square like any other square.

Cross-Examined.

By Mr. BAYNE:

Q. You have been examined with reference to the map "A," do you know what that map was—made out?

224 A. No, sir; but I know by the squares; I am sufficiently acquainted with the squares to know their location. The questions that have been asked me I can determie without reference to the map.

Q. I want to know—in 1870, so much of this space was open—was all open as a levee at that time?
A. In 1870, we were occupying these wharves.
Q. And the space in front of you was open?
A. It was open until they fenced it in. They fenced in *of* our ships in 1870.
Q. There was a contest between the Morgan road and this road?

A. No, sir; they fenced it in because they had a grant of it. That was the first we knew of it.

Q. You claim under a grant to the Opelousas and Western railroad?

A. No, sir; not this; we claimed the batture rights in front of square 27 "A," under an ordinance of the city council.

Q. And in making your application to the city council to purchase the square 27 "A," you claimed the batture rights all in front of that square, under the purchase of the rights of
225 the New Orleans, Opelousas and Western railroad. You made the offer to purchase that with all these batture rights under the ordinance which was then proposed by the city?

A. Yes, sir; under the charter of the road the city should designate one or more ferry landings for the use of the Opelousas railroad; and it was under that charter that we made this application for these batture rights and offered to pay for them.

Q. And for the ferry?

A. And for our ferry.

Q. Mr. Morgan never acquired the New Orleans and Opelousas railroad, and its rights and privileges?

A. Yes, sir.

Q. A proposition was made with reference to the rights you claimed under that charter?

A. Yes, sir.

Q. Is the levee in front here an increasing levee?

A. It was, but it is not now. It has been built out since 1870.

Q. Is the batture not increasing from Calliope street to Girod street?

A. Not at present.

226 Q. Is it increasing below at Canal street?

A. Not at present.

Q. How long since it ceased?

A. Well, perhaps four years since they made the last extension of the wharf, which was made by Eager, Ellerman & Co; that is the planking over and the filling in behind.

Q. The wharf lessees filled in a great deal?

A. All this land has been made by the filling in by the city.

Q. Do you not know that the New Orleans, Mobile and Chattanooga railroad filled in a large portion of this land in these squares 26 A, and the region there?

A. No, sir; they did not fill that in.

Q. Did they fill in any up to St. Joseph street?

A. They filled in some on St. Joseph street.

Q. Between St. Joseph and Julia?

A. No, sir; I think not; it was above St. Joseph street.

Q. It was between St. Joseph and what street?

227 A. Between St. Joseph and Calliope. This part was

all filled when they bought it; that is square 26 A was filled in.

Q. But the ground between Water street and St. Joseph and Calliope street?

A. They filled in a portion of this ground between St. Joseph and Calliope street in the vicinity of Water street.

Q. That was made ground?

A. It is all made ground; the whole levee is made ground; our ships used to lie at the corner of Delta and Julia streets before the war.

Q. And the levee all along down to Canal street has been made in that way?

A. Yes, sir.

Q. And since that time?

A. Yes, sir; since before the war; somewhere about 1858.

Re-examined.

By Mr. MILLER:

Q. This filling process that you speak of, by which this batture property has been made, was it done by the city or by the riparian proprietors?

228 A. It was done by the city from Calliope street to Canal; that is, since the war [it] has been done by the city, and previous to the war, I don't know who filled it. The city had the batture extended out in the river, and when the water fell it left the bare ground beyond the lines of the old wharves. The city would then extend the wharves out into deep water, building bulkheads in the rear of the wharves, and then would fill in the back of the bulkheads with river sand and offal from the city, so as to make a permanent ground. This was done from year to year, as the levee was extended out, and in some places, for example in the vicinity of St. Joseph street and Water, there were large holes left which had not been filled in, and a portion of which was filled in by the New Orleans, Mobile and Chattanooga railroad.

Q. These holes embraced one or two lots of ground?

A. Yes, sir; they were good sized holes, covering two or three lots.

229 Q. Referring to the map "A" before you, will you please state from what street delineated upon the map, between Calliope and Julia street, has that filling been made by the city?

A. Practically, the large bulk of that filling has been made by the city.

Q. From what street?

A. Calliope and Julia, and going back between Delta street and the river. The bulk of that has been done by the city.

Q. Is that filled now from Delta street to the river?
A. Yes, sir; it is all filled up now.
Q. All filled; well filled?
A. Yes, sir; a level grade.
Q. What is the distance between New street and the levee
A. I cannot say, because this has been extended out.
Q. The batture has been filled out since this map was made?
A. Yes, sir; since 1871.
Q. It is now all filled between New street and the river?
A. Yes, sir; I am only speaking of the filling since the war.

230 William E. Huger, a witness, produced, sworn, and examined on the part of the complainant, says—

By Mr. MILLER:

I have been administrator of public accounts of the city of New Orleans, and occupied that position from December 15, 1880, until the 24th November, 1882.

Q. You were a member of the Board of Liquidation while you were a member of the city government?

A. Yes, sir.

Q. After the organization of the Board of Liquidation under the act of 1880, what course of conduct did the city of New Orleans observe with reference to property not dedicated to public uses; I want to know whether the corporate authorities of the city other than the Board of Liquidation exerted any control over the property not dedicated to public uses; if so, what?

A. Well, the property not used, the city has sold—some in connection with the Board of Liquidation; I think there
231 was some property sold which had been used as a school-house, and the president of the Board of Liquidation joined in the act to make the title clear; that was property that had been used as a school-house, but not for some time.

Q. Are there any other instances of the sales of property not dedicated to public uses?

A. I remember none.

Q. I want to know whether the corporate authorities of the city of New Orleans other than the Board of Liquidation exercised any sale or power of sale or control over property not dedicated to public use since 1880?

A. The city sold franchises to railroads.
Q. Any other?
A. I don't remember any.
Q. If leases had been sold you would have remembered them?
A. Probably I would.
Q. The corporate authorities did sell railroad franchises, that is right of way to run railroads through the streets?
232 A. Yes, sir.

Q. What was done with the proceeds of these sales?
A. It was appropriated to the payment of the city debt.
Q. What sort of debt—the bonded debt?
A. Yes, sir.
Q. Who applied the proceeds?
A. The Board of Liquidation. The city also sold franchises for improvements under act 81 of 1882.
Q. What do you mean by that—franchises to run railroads through the streets, the proceeds to be applied to improving the streets?
A. Yes, sir; under the act of 1882 it was a direct sale, the improvements to be made by the railroads under the supervision of the city.
Q. The sales of which you now speak were not made for cash at all?
A. No, sir.
Q. But the consideration for the franchises was the improvement of the streets?
A. Yes, sir; such as the Carrolton railroad sale in 1882.
233 Q. Was there any other sale of franchises to run a street railroad, other than the Carrolton railroad, in which the proceeds were applied to the improvement of the streets?
A. No, sir.
Q. In other words, the sale of the Carrolton railroad franchises was sold under the act of 1882, when it was made for street improvements?
A. Yes, sir.
Q. All the franchises, other than that of railroads through the streets, were sold for cash, and the proceeds turned over to the Board of Liquidation—that is in your time?
A. Yes, sir.
Q. Now, with reference to the mass of the property of the city of New Orleans not dedicated to public use, subject to this act of 1880, who was treated by the city authorities as entitled to control that property?
A. Well, there is but one case in my recollection that I can name; that is only the school-house I mentioned. The
234 property was sold by the city, and the Board of Liquidation agreed to take part in the title or the act.
Q. To whom were these proceeds paid for the school-house?
A. They were paid to the Board of Liquidation.

Cross-examined.

By Mr. BAYNE:

Q. You spoke of the sale of the Carrolton railroad; did not the city at the first *sale* [sell] to the Carrolton railroad for a round sum of money, which was sought to be seized by the

United States marshal, and then the sale was rescinded or rejected by the city?

A. The council passed an ordinance to that effect, but it was not signed by the mayor.

Q. The council passed an ordinance to sell franchises to the Carrolton Railroad Company in 1881?

A. I don't know which year it was—in the winter of 1881 and 1882.

Q. And the sale was made for about how much—$600,000?

A. I have forgotten the figure.

Q. It was several hundred thousands of dollars?

235 A. I would not like to state.

Q. But it was for a large sum of money?

A. Yes, sir. I think it was $290,000, but I cannot give you that as evidence.

Q. That sale was rejected because the seizure was made?

A. Well, I can simply say the council passed an ordinance, and it was not approved by the mayor.

Q. But the object of the ordinance was to make the sale to the Carrolton railroad, which was for cash?

A. Yes, sir; that was the action of the council.

It is admitted that Mr. Van Benthuysen, the president of the Carrolton Railroad Company, under a sealed proposal, invited by an ordinance of the city council, made an offer for the franchises, accompanying his offer with a check for the amount, which was $290,000.

Q. Did they not sell the St. Charles street railroad franchise in 1881?

236 A. Yes, sir.

Q. For how much?

A. $300,000.

Q. The city paid over of that price $280,000.

A. $281,000.

Q. And the balance remained where?

A. In the general funds of the city.

Q. Has not the city ever since 1880, and for years before, exercised full power and authority over the granting of these franchises and privileges, by sale or otherwise?

A. Yes, sir; all during my term of office.

Q. Do you know of any grants made by the city since your term of office to the Elevated Railroad Company, for instance?

A. Yes, sir; I have seen the ordinance giving them the right of way.

Q. And the other privileges for what consideration?

A. That I did [not] notice what it was for.

Q. That being granted, I think, in 1883, this year?

237 A. Yes, sir.

Q. The city is now in the full operation and in the discharge of its usual functions as a city government, is it not?

A. Yes, sir.

Q. Do you know of leases made or renewed, or extended to the Morgan Railroad Company of the portion of ground in front of Jackson square for their building, now occupied and used by them?

A. We have to refer back for that; I have a distinct recollection of it, but I cannot fix the date.

Q. That class of questions of grants and leases, rights of way, privileges, franchises, leases of portions of ground, and all that class of questions are coming up from day to day during the period of your service in the city government?

A. Such questions come up sometimes.

Q. For action in the city council, and the council act on these subjects one way or the other?

A. Yes, sir; I have cited cases to establish that.

By Mr. MILLER:

238 Q. The franchises of which you speak are all shown in the ordinances?

A. Yes, sir.

Q. That is, to the Elevated Railroad Company?

A. That is, since I have been out of office.

Q. And the Morgan railroad?

A. Yes, sir.

Q. Whatever they are, are in the ordinances?

A. Yes, sir.

By Mr. BAYNE:

Q. You never saw any formal written title made by the city to the Board of Liquidation of any real estate?

A. No, sir; none that I took part in.

Complainants offer in evidence the ordinance of the city council of 11th day of October, 1882, with the act for the settlement and compromise of the city of New Orleans with the Louisville and Nashville Railroad Company, which is herewith filed and marked "D, E." The act of compromise embraces the or-

239 dinance recited therein.

Also the ordinance No. 7037, making certain grants to the Chicago, St. Louis, and New Orleans Railroad Company, at page 617 of Jewell's Digest.

Also the ordinance No. 6938 grants to the New Orleans Pacific Railroad Company, at page 626 Jewell's Digest. For Exhibit "D, E" see page 20, *ante*.

Also the ordinance making certain grants to the Elevator Warehouse Company, No. 899, page 627.

Also the ordinance of —— day of ——, granting certain privileges to the Liverpool Warehouse.

Also the ordinance No. 6532, to carry into effect act No. 133, passed by the General Assembly of 1880, marked "F."

Also the various acts of purchase by which the New Orleans, Mobile and Chattanooga railroad acquired the property of the batture between St. Joseph and Notre Dame streets, to be marked as Exhibits "G, H."

240 Also offers the resolution offered in the city council on June 5, 1883, contained in the council proceedings of that date proposing to repeal and rescind Ordinance No. 8079, marked "J."

It is admitted that the above resolution was not acted upon, but referred as stated in the council proceedings.

Also offers the act of 1880, No. 133, and the act No. 58 of 1882.

It is agreed that these shall be referred to as part of the record and the evidence, all the legislative acts, applicable to either side, touching the subject-matter of this litigation whether for the plaintiff or defendant or both.

241 UNITED STATES OF AMERICA, } ss:
Eastern District of Louisiana. }

I, F. A. Woolfley, special examiner, duly appointed by consent of the parties in the said cause to take the depositions of Louis H. Pilié, Terence Wolfe, N. J. Hoey, Jesse K. Bell, Edward Conery, E. L. Bower, Joseph H. Oglesby, A. C. Huchinson, and William E. Huger, witnesses on the part of the complainant, do hereby certify that on the days named in the depositions hereto annexed, I was attented at the office of the clerk of the circuit court of the United States for the eastern district of Louisiana, in the city of New Orleans, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined, and the depositions were reduced to writing, and by counsel the signatures of said witnesses to their depositions were waved.

And that the Exhibits, Plan "A," Ordinance of the city of New Orleans of October 11th, 1880, No. 8079, with the act
241½ for the settlement and compromise of the city of New Orleans and the Louisville and Nashville Railroad Company, marked "D, E."

Plan marked "B."

Resolution of city council of December 16th, 1867.

Testimony of W. H. Bell.

Ordinance of the city of New Orleans, No. 6938, page 626, Jewell's Digest of the city ordinances.

Ordinance of the city of New Orleans, No. 7037, page 617, Jewell's Digest of the city ordinances.

Ordinance of the city of New Orleans relating to the Elevator Warehouse Company, No. 899, page 627, Jewell's Digest.

Ordinance of the city of New Orleans relative to the Liverpool warehouse. [Not furnished.]

Ordinance of the city of New Orleans, No. 6532, to carry
241¾ into effect act No. 133, passed by the General Assembly of 1880, marked "F."

The various acts of purchase by which the New Orleans, Mobile and Chattanooga Railroad Company acquired the property of the batture between St. Joseph and Notre Dame streets, marked "G and H."

Resolution offered in the city council on June 5th, 1883, to rescind ordinance No. 8079, marked "J."

Act No. 133, of 1880, and act No. 58, of 1882, were introduced in evidence in said cause, during the taking of said depositions.

(Signed) F. A. WOOLFLEY,
NEW ORLEANS, June 8th, 1883. *Special Examiner.*

242 *Testimony of W. H. Bell. Offered by complainant, May* 30, 1883.

Eighth District Court.

N. O., M. AND CHAT. R. R. Co., *vs.* CITY OF NEW ORLEANS, *et als.* } No. 19.

Testimony, Jan. 25, 1871.

W. H. Bell, sworn for the city of New Orleans.

Question. You are city surveyor?

Answer. Yes.

Q. Please look at the tracing, marked A H, and say whether or not that tracing was made at your office—the city surveyor's office?

A. It was.

Q. From what original map was that made?

A. From the original map, filed with the mayor of the city of New Orleans by the company; the dates of which filing is on the original maps.

Q. By what company was it filed?

243 A. By the New Orleans, Mobile and Chattanooga Railroad Company.

Q. These figures on the map, at the heads of different streets, what do they indicate—do not the inside figures indicate the distance from the line of the houses to the track?

A. Yes, to the centre line of the track.

Q. I see arrow-marks at each end of different lines; do not

the figures between the arrow-marks indicate the distances from one arrow-mark to the other, throughout the map?

A. Yes, sir.

Q. The object, of these arrow-marks, or angles, is to show where a line begins and where it ends?

A. To limit the distances.

Q. And the figures on the map indicate the distances between these arrow-marks?

A. Yes.

Q. Look at this other map, marked A 1, and state whether or not that tracing was made in the city surveyor's office, and, if so, from what was it made?

244 A. This was made from an original map in the surveyor's office, and that original map was prepared there in the surveyor's office.

Q. By whom was that original map made?

A. In the surveyor's office, under my directions.

Q. What do the blue lines running through Elysian Fields and Claiborne streets indicate?

A. The lines of the railroad.

Q. What railroad?

A. The Pontchartrain and the Chattanooga railroads, through Elysian Fields.

Q. The blue line in the centre indicates what?

A. In the centre of Claiborne street it is the Chattanooga railroad.

Q. And in the centre of Elysian Fields does it not indicate the Chattanooga railroad?

A. Yes.

Q. I see along Elysian Fields street, opposite the cross streets, certain figures—what do these figures indicate?

A. The distance of the track from the property line.

245 Q. Please look at the map marked A G—that map shows certain buildings erected, fences made, brick piers in course of construction, etc.—was a survey made of that portion of the levee for the purpose of ascertaining whether or not those buildings, fences, etc., were erected, and whether the fences were or not on the batture?

A. Yes.

Q. And the facts in relation to the buildings, fences, and improvements, etc., stated on the map are correct?

A. Yes.

Q. They are correct as these buildings, fences, etc., stood?

A. Yes; as they stood at the day of the survey.

Q. There is a difference, now, relative to the width of the batture—say from St. Joseph street—three or four squares.

A. The increased width of the batture commences from Girod

street to Canal street—that is the increased width of the solid batture.

Q. Does this plat marked B C show the present condition of the batture?

246 A. This is the one you received yesterday.

Q. This then represents the present condition of the road?

A. Yes, from the bulkheads to the wharf, as they are at present.

Q. And the figures on the map show the correct distances?

A. Yes.

Q. And as they were at the time the measurement was made?

A. Yes; and that was only three days ago.

The city offers in evidence this map, marked B C, now filed.

Q. The memorandum or statements on the map, marked A G, are correct; are they below the river line?

A. Yes.

Q. I see on certain squares of ground located on the map marked A G—you have placed certain figures—34,000, 38,000, 38,700, 38,500, 50,700; what do these figures indicate?

A. I was requested to make a valuation and place it on the map.

Q. They indicate, then, the valuations which you put on at the request of some city official?

A. Yes.

247 Q. Were you not told by me to ascertain the value of the property, and indicate it on this map?

A. If I remember right the instructions came from your department, (city attorney's.)

Q. Are you pretty familiar with the value of property on the batture?

A. The basis on which I made this valuation was the price that the Ponchartrain Railroad Company paid, $130,000, for the two squares located at the head of Lafayette street from Girod to Poydras. I took the area of these two squares, and then took the area of those claimed by the Chattanooga Railroad Company, and made the same *pro rata* valuation.

Q. And this method of determining the valuation gave you the figures which you placed on the respective squares?

A. Yes; taken in the aggregate it would be more, but one square between Notre Dame and Girod is not filled up, therefore I made a corresponding reduction in its value. The property between Canal and Poydras, and between Delta and Water streets, would be much more valuable than the Pontchar-

248 train railroad property, and lying between Delta, Water, Girod, and Poydras; but I have fixed the same valuation of both.

Q. As far as your knowledge extends, do you consider that a just and reasonable estimate of property in that vicinity?

A. Yes; I think the city could realize that in cash to-morrow for this property.

Q. Do you know the route of the Chattanooga railroad on the levee?

A. Yes.

Q. Does, or not, the route of the Chattanooga railroad lie between the Pontchartrain railroad track and the river?

A. The Chattanooga railroad lies between the Pontchartrain railroad and the river.

Q. Do you know, or not, whether the Pontchartrain railroad runs close to the property all throughout?

A. It runs nearer the property front than the Chattanooga route; it is what we term the inside track at the office.

Cross-examined.

Q. When did the Ponchartrain Railroad Company buy those squares that you speak of?

249 A. The comptroller's report shows that it was purchased February 8th, 1868.

Q. Do you know whether they were paid for, and in what currency?

A. I cannot say positively.

Q. Were they not paid for in city notes?

A. I cannot answer that question. I do not know.

Q. Has property appreciated or depreciated since 1868, all over the city of New Orleans?

A. That depends a great deal on who wants to buy and who wants to sell.

Q. Is there not a general depreciation of from twenty to twenty-five or thirty per cent. in the value of property since 1868?

A. I can hardly admit that. It would not be speaking very well for these two railroad companies on the levee.

Q. I do not ask for any argument; I ask about your knowledge?

A. I am not prepared to answer questions outside my profession.

Q. Have you not been city assessor, or employed in the

250 assessment of various properties?

A. Frequently I have been called on to make valuations.

Q. Called on by whom?

A. Different officers of the city.

Q. Is that a part of the surveyor's duties?

A. The surveyor has to furnish all information to all departments of the city government to the best of his ability.

Q. That is in his line?

A. Yes.

Q. You say that the original of the map A 1 was made at the city surveyor's office; was that made from any survey made by the city surveyor?

A. That plan was made from maps in the office. We have maps of all the squares in the city, and the location of the Chattanooga railroad was measured at different points, as indicated on the map. The distances on Claiborne street are not given, because it was supposed to be in the centre of the street, which is one hundred and ninety feet ten inches wide.

252 MAYORALTY OF THE CITY OF NEW ORLEANS,
CITY HALL, 16th day of December, 1867.

Resolved, That all property, whether real or personal, belonging to the city of New Orleans, which can be disposed of without detriment to the public interest or convenience, shall be sold under the supervision and direction of the chairman of the finance committees.

The sale thereof to commence on the third Monday of January, 1868, and to be continued from time to time, at the discretion of the chairmen of said committees.

Resolved, That the terms of said sale shall be one-third cash, payable in city notes, and the balance in notes of equal amounts, secured by mortgage on the property, payable at one and two years, with interest at the rate of eight per cent. per annum from date until paid, and with five per cent. lawyers' fees in case it should be necessary to institute suit for the payment of said notes. Acts of sale before the city notary, with internal
253 revenue stamps at the expense of the purchaser, who will have the option to pay the entire purchase money cash in city notes.

(Signed) F. W. PERKINS,
President Pro Tem. Board Asst. Aldermen.

(Signed) JAMES GRAHAM,
President Board of Aldermen.

(Signed) E. HEATH, *Mayor.*

Approved December 16, 1867.

254 MAYORALTY OF NEW ORLEANS,
CITY HALL, *October* 11, 1882.

No. 8789.—Administration Series.

Whereas, propositions have been made for the compromise and settlement of the suit and the matters involved therein, known as The City of New Orleans *versus* The New Orleans, Mobile and Texas Railroad Company, now pending in the Supreme Court of the United States, on an appeal taken by the city of New Orleans from the judgment of the circuit court of the United

States for the district of Louisiana, rendered on the 11th of June, 1878, affirming and declaring as res adjudicata the judgment rendered by the eighth district court for the parish of Orleans, on the 15th day of December, 1871, which judgment was affirmed by the supreme court of the State of Louisiana, No. 3692, in favor of said New Orleans, Mobile and Texas Railroad Company and against the city of New Orleans, affirming the constitu-
255 tionality of the several acts of the Legislature of Louisiana, of 1868, 1869, and 1870, relative to said railroad company, and the grants, rights, and privileges made to said company. And to grant and confirm the New Orleans, Mobile and Texas Railroad Company, as reorganized, and the Louisville and Nashville Railroad Company in the grants, rights, occupancy, and privileges heretofore made by the city, and granted and confirmed by the State of Louisiana, and to the New Orleans, Mobile and Chattanooga Railroad Company, and the New Orleans, Mobile and Texas Railroad Company, in and by the several acts of the Legislature, No. 28 of 1868, Nos. 26 and 67 of 1869, and No. 31 of 1870.

Be it resolved, That the mayor of the city of New Orleans, is hereby authorized and directed to accept the proposition made and to compromise and settle with the New Orleans, Mobile and Texas Railroad Company, as reorganized, and the Louisville and Nashville Railroad Company, reorgan-
256 ized, as successors and entitled to the rights, grants, and privileges heretofore made to the New Orleans, Mobile and Chattanooga Railroad Company, and the New Orleans, Mobile and Texas Railroad Company, and the matters in controversy, and the suit of The City of New Orleans *versus* The New Orleans, Mobile and Texas Railroad Company, dismissing said appeal, acquiescing in the judgments rendered in favor of said railroad company, and confirming to the New Orleans, Mobile and Texas Railroad Company, the rights, grants, and privileges heretofore granted by the city of New Orleans, and by the State of Louisiana, as set forth in the preamble heretofore, and in consideration of forty thousand dollars; and the mayor is authorized to receive the same, and to sign any and all agreements and contracts necessary or proper to carry out this ordinance and the compromise and settlement above mentioned, and to have the appeal taken herein by the city of New Orleans dismissed, and acquiesce in the judgments rendered in
257 favor of the railroad company, as a final settlement of the same.

Adopted by the council of the city of New Orleans, October 11th, 1882.

Yeas—Delamore, Fagan, Fitzpatrick, Huger, Mealey, Walshe.

Absent—Guillotte.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

A true copy.
(Signed) M. McNAMARA,
Secretary.

Ordinance No. 7037.

Administration Series. May, 1881. Section IX. C. St. L. and N. O. Railroad.

ART. 77. (1.) That all that portion of the wharves of the city extending from the lower line of the New Orleans Pacific railroad grant for wharves, down to a point within two hundred and twenty-five feet of the upper line of the present wharf of
258 [the] Louisville and Nashville railroad, is hereby set apart for the use of, and as a landing place for, steamboats, barges, steamships, sailing vessels, and other water craft, delivering cargoes to, or receiving cargoes from, the Chicago, St. Louis and New Orleans Railroad Company: *Provided, however*, That it is not the intention of this ordinance to give to said railroad company the exclusive right to use said whaves, but only to give it such preference in the use thereof as will facilitate the transaction of the business consigned to, and from, said railroad company.

Ordinance 6938.

Administrator Series. March, 1881. Section XV. N. O. Pacific Railway. Art. 119, (4.)

That the said New Orleans Pacific Company, its successors and assigns, shall have the right, and the same is hereby conferred, for the term of its charter, and from and after the expi-
259 ration of the existing lease of city wharves, to enclose and occupy for its purposes and uses that portion of the levee, batture, and wharf, in the city of New Orleans, in front of its riparian property, acquired or to be acquired, between Thalia and Terpsichore streets, and to erect and maintain thereon, at its own expense, such ferry facilities, wharves, piers, warehouses. elevators, yards, tracks, depots, stations, sheds, and other structures, as shall be necessary and convenient for the transfer of cars, engines, passengers, and freight, and in the transaction of of its business. No vessels shall occupy or lie at such wharves without the consent of the said company, or its successors or assigns, or discharge or receive cargo thereat; and all vessels lying at or using said wharves by such consent, and on the business of the company, shall be exempt from the payment of levee or wharf dues to the city of New Orleans. Said wharves and other structures shall be lighted and policed by said company at its own expense.

Any vessel lying at these wharves with the consent of
260 the company, but not on its business, or not for the purpose of discharging or receiving freight or passengers to

or from said company as a carrier, shall be liable to the city for usual wharf or levee dues.

Any vessel using said wharf to receive any freight not coming to or going from said company as a carrier shall pay usual wharfage dues to the city.

In consideration of the permission herein given, the company will build three hundred feet of new wharf at such point between Terpsichore and Jackson streets for the city as the administrator of commerce may indicate, and will pave Pilie street, between Thalia and Terpsichore streets, between Pilie and Front streets, with square blocks of granite, or with blocks of compressed asphalt, and keep the same in good repair. The rights conferred by this section shall not be held to interfere with the rights of the city to police any part of the river front.

Ordinance 899.

261 New series, May, 1868. Section XVI. Grain elevators.

ART. 120, (1.) That in consideration of the establishment, in the city of New Orleans, of grain elevators, warehouses, and appurtenances, on the part of and at the expense of the "New Orleans Elevator and Warehouse Company," said works to be commenced within sixty days, and to be completed in one year after the promulgation of this ordinance, the city of New Orleans does hereby grant to the said "New Orleans Elevator and Warehouse Company" the privilege of building a wharf equal to any now existing the city; said wharf shall be built on a point on the river bank, opposite the square of ground bounded by Pleasant, Harmony, Tchoupitoulas and Levee streets, to occupy two hundred and seventy-five (275) feet of the river bank, and to be built into the river to a sufficient distance so as to be in twenty feet of water at low water; said wharf to be built and kept in
262 repair at the expense of said company, and under the supervision of the city surveyor.

ART. 121, (2.) That all steamboats or vessels consigned to the "New Orleans Elevator and Warehouse Company," and landing at their wharf for the purpose of discharging and receiving grain, shall be exempted from wharf and levee dues while at said wharf.

ART. 122, (3.) That the city of New Orleans does further grant to the "New Orleans Elevator and Warehouse Company" the privilege of constructing and working conveyors from their elevators across and over the sidewalks and streets to their wharf, said conveyors to be constructed twenty feet above the level of the street.

ART. 123, (4.) That the city of New Orleans does grant these privileges before named to the "New Orleans Elevator and Warehouse Company" for the term of fifteen years, and at the

expiration of this privilege said wharf to revert to the city at a valuation to be fixed by two disinterested parties, one to
263 be appointed by the city, and the other by the company; and in the event of a disagreement as to said valuation between said parties an umpire shall be appointed by one of the district courts of New Orleans, the decision thereby had to be final.

264 Act of donation of batture property to the mayor, aldermen, and inhabitants of New Orleans, passed before Hughes Lavergne, notary, in the French language, September 20th, 1820. Offered by complainant June 6th, 1883.

Translation of the foregoing act.

City Council of New Orleans.

Whereas proposals have been made by Messrs. Mazereau and Livingston to the council of the city in the name of and for the actual owners of the batture front on St. Mary suburb.

Resolved, That the council of the city accepts the said proposals in the manner hereafter expressed, to wit:

ARTICLE 1st. The actual owners of the batture front on St. Mary suburb will cede to mayor, aldermen, and inhabitants of New Orleans, and for public use, on the condition of never being alienated or liable to seizure for debts or otherwise.

1st. All the portion of said batture or alluvion from the inferior limit of the property of M. W. Montgomery, and coming down up to the boundary of the city, and from the exterior base of the new levee up to the marginal line of the waters of the river.

265 2d. A levee of sixty feet on the top in all the extent of said portion of the batture, which will have to be made and completed in the direction of the yellow-colored lines on the plan hereto annexed and designated by the letters A, B, C, D, which plan will be signed (ne varietur) by the contracting parties, and that [the] levee will have to be protected with wood in the same manner as that part of the levee in front of the city, between Conti and Bienville streets.

3d. All the prolongation of the streets of said suburb up to the new levee, the grading of which streets so prolonged from Tchoupitoulas street, as well as the enlargement and revertment of the said new levee, will be constructed at the expense of said owners, who moreover will bind themselves to build at the extremity of each street, outside of the levee, a platform having twelve feet long and wide as the street with a gradual grading on each side.

4th. Tchoupitoulas street, sixty feet wide, sidewalks included.

ART. 2d. No person will be authorized to erect any build-

266 ing or construction on the levee and the portion of the batture above ceded, nor on any portion of the space reserved for the streets, except the only case where the city council would judge convenient for the general welfare to authorize the establishment of a fire engine on such portion of the said batture ceded that the said council would chose for that purpose.

ART. 3. The work of the levee above mentioned, will be immediately commenced, from the inferior limit of St. Mary suburb going up, it will be continued without interruption as long as the rising of the river will not prevent it, and it will have to be achieved in two years from the date of the act hereinafter mentioned.

ART. 4. The necessary works for the prolongation and filling of the streets of said suburb from Tchoupitoulas street up to the New Levee, will have to be completed at least on the first of January, one thousand eight hundred and twenty-one, so as to make said streets practicable for the vehicles at that time.

ART. 5. All the works above described will be executed under the direction and approbation of the surveyor of the
267 city, and in case the actual owners of the said batture will not commence the said works within the fifteen days after the day of the signing of the act hereinafter mentioned by the contracting parties, the mayor and the council of the city will have the right to have the said works executed at the cost and expense of said owners, and in the manner the said mayor and council of the city will judge convenient, and moreover they will be authorized to seize and sell the lots or respective places of said owners for the payment of said works.

ART. 6. Immediately after the achievement of said works and their acceptation by the surveyor of the city, the maintenance and repair of the levee, streets, platforms and turns, above mentioned, will be in charge of the mayor, aldermen, and inhabitants of New Orleans.

ART. 7. Until the said streets be filled and properly elevated and the works of the levee be completed the public will not be authorized to take earth on the batture ceded by the said owners, except and on the portion of said batture which is between
268 a corresponding line to the prolongation of Girod street and the boundary of the property of W. M. Montgomery, and the surveyor of the city will see that said earth be taken away by equal portions.

ART. 8. It is understood that the clause which does not permit to sell, alienate, seize, or build, cannot be interpreted so as to prevent the mayor and the council of the city of New Orleans from establishing, or having established, jetties or wharves for the facility of trade, when the said mayor and council of the city will think it fit and convenient.

ART. 9. The above owners of the batture or alluvion aforesaid

will pay to the mayor and council of the city of New Orleans a sum of three hundred dollars for every lot of ground of thirty feet front on new levee, without regard to the depth of said lots of ground; and this in their respective notes to the order of the mayor of New Orleans, at one and two years' credit from the day of the signing of the act by the contracting parties; and they will grant besides, as far as each one of them is con-
269 cerned, a special mortgage on said lots of ground to secure payment of said notes.

ART. 10. The amount of above payment is destined to the costs of the construction of a market, to be used as a public market, which market will be placed in the St. Mary suburb; nevertheless, in case the sum coming from said payments would be more than sufficient to meet the expenses of building the said market, the excess will be employed for the cost of construction of another market for the same object; which market will be placed in the Marigny suburb.

ART. 11. Within a month from the date of the act between the contracting parties it will be the duty of the owners of the batture front on St. Mary suburb to have demolished the wooden buildings which actually exist on the said batture; and no person will be authorized to erect houses or buildings in said place except with brick walls or stones, and said houses or buildings covered with tiles or other incombustible matter.

Resolved, moreover, That the mayor is hereby authorized to pass, before one of the notaries of this city, with the actual own-
270 ers of the batture front on St. Mary suburb, the act or necessary contract to establish the acceptation of aforesaid proposals by the mayor and the council of the city, in the name of the mayor, aldermen, and inhabitants of New Orleans; not until the mayor will have taken the advice of the city attorney on the form and tenor of the aforesaid act, and after the project of said act will have been submitted to the examination and approbation of the city council.

(Signed) J. SOULIÉ,
Recorder.

Approved August 31st, 1820.
(Signed) J. ROFFIGNAC,
Mayor.

A true copy.
(Original signed) MN. BOURIXON, *Sve. Gr.*

STATE OF LOUISIANA, *City of New Orleans.*

I hereby certify the above and foregoing to be a true and correct copy of the original document, annexed to an original act, passed before Hugues Lavergne, late a notary public in this city, under date of the 20th day of September, A. D. 1820, purporting to be a donation to the mayor, aldermen, and inhabitants of

271 New Orleans, of the batture in front of suburb St. Mary, by the possessors thereof, which original act and document annexed are on file and of record in my office.

In faith whereof I hereunto set my hand and affix my seal of office on this 9th day of August, A. D. 1883.

[SEAL.] (Signed) M. VOORHIES,
Custodian Notarial Records.

272 City Ordinances. Official.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *June 16th*, 1880.

No. 6532. Administration Series.

An ordinance to carry into effect act No. 133 of the General Assembly, approved April 10th, 1880.

Whereas the Board of Liquidation of the city debt, created by said act of the general assembly, approved April 10th, 1880, have been duly organized, and are prepared to undertake the trust given them, therefore—

SECTION 1 Be it ordained by the mayor and administrators of the city of [New] Orleans, in council convened, that the commissioners of the consolidated debt of the city of New Orleans be, and are hereby, directed to turn over and transfer to the Board of Liquidation, created by said act No. 133, all books, papers, accounts, deposits, bonds, credits, and all property under their con-
273 trol or in their possession, pursuant to the provisions of said act, and said commissioners shall require of the said Board of Liquidation a detailed receipt of all things so turned over and transferred.

SEC. 2. Be it further ordained that the administrator of finance be, and he is hereby, authorized and directed to deposit to the credit of the said Board of Liquidation of the city debt, and in such bank as shall be selected by them, all taxes appropriated and collected for the interest of the bonded debt of the city of New Orleans, provided the said Board of Liquidation shall carry out the engagements now existing between the Louisiana National Bank, the commissioners of the consolidated debt, and the city of New Orleans.

SEC. 3. Be it further ordained that all ordinances and parts of ordinances, in conflict or inconsistent with the provisions of this ordinance be, and the same are hereby, repealed

274 Adopted by the council of the city of New Orleans, June 16th, 1880. Yeas—Chevalley, Collins, Glynn, Isaacson.

(Signed) I. W. PATTON, *Mayor.*

A true copy.

(Signed.) ROBERT C. WOOD,
Secretary.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *6th June*, 1883.

A true copy of Ordinance No. 6532, administration series, adopted by the council of the city of New Orleans, 16th June, 1880, and duly promulgated in the official journal after approval by the mayor.

[SEAL.] E. L. BOWER,
Chief Clerk, Mayor's Office.

275 *Act of Sale. Filed June* 16, 1883.

No. 106. Sale of property. City of New Orleans to New Orleans, Mobile and Chattanooga Railroad Company.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known, That on this first day of February, in the year of our Lord, one thousand eight hundred and sixty-eight, before me, Henry C. Dibble, a notary public in and for the city, parish, and State aforesaid, and official notary for said city, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned.

Personally came and appeared the Honorable Edward Heath, Mayor of the city of New Orleans, herein acting in his said capacity, who declared that by virtue of, and pursuant to, Ordinance No. 806, new series, passed by the common council of the city of New Orleans, and approved on the 18th day of December, 1867,

Camille E. Girardey, a duly licensed auctioneer of this
276 city, did, after due advertisement, expose for sale at public auction, on the 20th day of January, 1868, at the mechanics' and auctioneer's exchange on Royal Street, between Canal and Custom-house street, in this city, certain various pieces of property, belonging to said city, including batture and other lots, which said property has been subdivided into squares and lots agreeable to plans made by William H. Bell, city surveyor, dated the 7th day of December, 1867, and deposited in the office of the undersigned notary for reference. At which public sale the property hereinafter described was, by the said auctioneer, adjudicated to the New Orleans, Mobile and Chattanooga Railroad Company, a duly incorporated institution domiciled in the city of New Orleans, the last and highest bidder thereon, for the price and sum of twenty-three thousand five hundred dollars, ($23,500,) payable one-third cash in matured and lawful obligations of the city of New Orleans, and the balance in notes of equal amounts, secured by special mortgages on the property,

said notes payable at one and two years with interest at
277 the rate of eight per cent. per annum from date until paid, and with five per cent. lawyer's fee in case it should be

necessary to institute suit for the payment of said notes. All of which will more fully appear by reference to the process verbal of said auctioneer annexed, together with a duly certified copy of the ordinance above mentioned, to an act of deposit in the office of the undersigned notary, dated the 24th day of January, 1868.

Now, therefore, in consideration of the premises, and pursuant to the terms and conditions of sale and adjudication aforesaid, he, the said appearer, moreover declared, that he doth, by these presents, in his said capacity, and by virtue of the authority in him vested, grant, bargain, sell, transfer, assign, and set over, with all legal warrants, unto the New Orleans, Mobile and Chattanooga Railroad Company, herein represented by the agent, Henry Van Vleck, of the city of New Orleans, present, accepting and purchasing for the New Orleans, Mobile and Chattanooga R. R. Co., its successors and assigns, and acknowledging delivery and
278 possession thereof, the following described property, to wit:

Ten certain lots of ground, together with all the rights, privileges, customs, way, servitudes, and appurtenances thereunto belonging, or in any wise appertaining, situate in the first district of this city, in the square bounded by Pilie, Julia, St. Joseph streets and the batture. Said ten lots of ground are numbered from twelve (12) to twenty-one (21) inclusive, on a plan of said square of ground, drawn by William H. Bell, city surveyor, dated 5th day of December, 1867, and deposited with me, notary, as plan No. 6, as aforesaid; lot No. 12, measures twenty-three (23) feet four (4) inches and two (2) lines front on Pilie street, by a depth of one hundred and twenty (120) feet between parallel lines, and with front on batture; lots Nos. thirteen (13) to twenty-one (21) inclusive, have the same measurement throughout; lot No. twenty-one (21) forming the corner of Pilie and St. Joseph streets and the batture, and having one hundred and twenty feet (120) on St. Joseph street; all in acccordance
279 with said plan. To have and to hold the said described property, together with all the rights, privileges, and appurtenances thereunto belonging, unto the said purchaser, its successors, heirs, and assigns, forever: the said mayor hereby binding and obligating the city of New Orleans, to warrant and defend the same against all legal claims and demands whatsoever; and, moreover, hereby subrogating the said purchaser in and to all the rights and actions of warranty or otherwise, to which the said city now is, or may be, entitled in the premises.

This sale is made and accepted for, and in consideration of, the price and sum aforesaid, of twenty-three thousand and five hundred dollars ($23,500) in cash, city notes as aforesaid. United States internal revenue stamps amounting to twenty-three dollars and

fifty cents are hereunto affixed, duly cancelled at the execution hereof.

The said purchaser, availing itself of the privilege granted by the terms of said adjudication, has paid the whole of said purchase price in cash, the said mayor grants acquittance therefor, and it is agreed that this act need not be recorded in the mortgage office.

By reference to the annexed certificate of the recorder of mortgages for the parish of Orleans, it will be seen that there are no mortgages recorded against said property, except the drainage privilege.

The said property having been by law exempt from taxation, the production of tax receipts are not required.

Done and passed in my office at New Orleans, the day, month and year first above written, in the presence of M. Van Brockein and W. W. McCullough, competent witnesses, domiciliated in this city, who have hereunto signed their names, with the said parties and me, the notary, after reading of the foregoing.

(Original signed) J. HEATH, *Mayor.*
" HENRY VAN VLECK, *Agent.*
" M. VAN BROCKEIN.
" W. W. McCULLOUGH.
" HENRY C. DIBBLE, *Notary Public.*

Registered Conveyance Office, B. 93, fo. 563, N. Orleans, 4th February, 1868.

[SEAL.] (Original signed) F. S. ORMAUD, *D'y R.*

STATE OF LOUISIANA, *City of New Orleans.*

I hereby certify the above and foregoing to be a true and correct copy of the original act on file, and of record in my office.

In faith whereof I hereunto set my hand and affix my seal of office, on this the 9th day of June, A. D., 1883.

[SEAL.] M. VOORHIES,
Custodian Notarial Records.

Act of Sale. Filed June 6, 1883.

No. 117. Sale of Property. City of New Orleans to the New Orleans, Mobile and Chattanooga Railroad Company.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known, that on this thirteenth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, before me, Henry C. Dibble, a notary public, in and for the city, parish, and State aforesaid, and official notary for said city, duly

commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned.

282 Personally came and appeared the Honorable Edward Heath, Mayor of the city of New Orleans, herein acting in his said capacity, who declared that by virtue of, and pursuant to Ordinance No. 806, new series, passed by the common council of the city of New Orleans, and approved on the 18th day of December, 1867, Camille E. Girardey, a duly licensed auctioneer of this city, did, after due advertisement, expose for sale at public auction, on the 20th day of January, 1868, at the Mechanics' and Auctioneers' Exchange, on Royal, between Canal and Custom-house streets, in this city, certain various pieces of property, belonging to the said city, including batture and other lots, which said property has been subdivided into squares and lots agreeable to plans made by William H. Bell, city surveyor, dated the 7th day of December, 1867, and deposited in the office of the undersigned notary for reference. At which sale the property hereinafter described was, by the said auctioneer, adjudicated to the New Orleans, Mobile and Chattanooga Railroad Company, a duly incorporated institution,

283 domiciled in the city of New Orleans, the last and highest bidder thereon, for the price and sum of forty thousand dollars, ($40,000), payable, one-third cash in matured and lawful obligations of the city of New Orleans, and the balance in notes of equal amounts, secured by special mortgage on the property; said notes payable at one and two years, with interest at the rate of eight per cent. per annum from date till paid, and with five per cent. lawyers' fees, in case it should be necessary to institute suit for the payment of said notes. All of which will more fully appear by reference to the process verbal of said auctioneer annexed, together with a duly certified copy of the ordinance above mentioned, to an act of deposit in the office of the undersigned notary, dated the 24th day of January, 1868.

Now, therefore, in consideration of the premises, and pursuant to the terms and conditions of sale and adjudication aforesaid, he, the said appearer, moreover declared that he doth, by these presents, in his said capacity, and by virtue of the authority

284 in him vested, grant, bargain, sell, transfer, assign, and set over, with all legal warrants, unto the New Orleans Mobile and Chattanooga Railroad Company, herein represented by their agent, Henry Van Vleck, present, accepting and purchasing for said railroad company, its successors, heirs, and assigns, and acknowledging delivery and possession thereof, the following described property, to wit:

Twenty-one certain lots of ground, together with all the rights, privileges, ways, customs, servitudes, and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city, and forming the whole of the square, bounded by

Water, Pilie, Julia and St. Joseph streets, said square of ground is numbered "25 A" on a plan thereof prepared by William H. Bell, city surveyor, dated the 7th day of December, 1867, and deposited with me, notary, as plan No. 5, as aforesaid. Lot No. one (1) of said square forms the corner of Water, Pilie, and Julia streets, has a front of twenty-three (23) feet four (4) inches and two (2) lines on Water street, by a depth between parallel lines and front on Julia street of one hundred and twenty (120)
285 feet, four (4) inches, and a front on Pilie street corresponding with that upon Water street. Lot No. two (2) has the same front on Water street and Pilie street as lot No. one (1), and has the same depth between parallel lines. Lots from three (3) to twenty (20) inclusive have the same measurement throughout as lot No. two (2). Lot No. twenty-one (21) forms the corner of Water, Pilie, and St. Joseph streets, and measures twenty-three (23) feet four (4) [inches] and two (2) lines front on Water street, by a depth, between parallel lines and front on St. Joseph street, of one hundred and twenty (120) feet four (4) inches. All in accordance with said plan.

To have and to hold the said described property, together with all the rights, privileges, and appurtenances thereunto belonging, unto the said purchaser, its successors, heirs, and assigns for ever. The said mayor hereby binding and obligating the said city of New Orleans to warrant and defend the same against all
286 legal claims and demands whatsoever, and moreover, hereby subrogating the said purchaser, in and to all the rights, and actions of warranty, or otherwise, to which the said city now is or may be entitled in the premises.

This sale is made and accepted for and in consideration of the price and sum aforesaid of forty thousand dollars ($40,000), which, pursuant to the terms of said adjudication, has been paid by the said purchaser, in the manner following, to wit: the sum of forty thousand dollars ($40,000) in cash in city notes as aforesaid.

United States internal revenue stamps amounting to forty dollars ($40) are hereunto affixed, duly cancelled at the execution hereof.

The said purchaser, availing itself of the privilege granted by the terms of said adjudication, has paid the whole of said purchase price in cash, the said mayor grants acquittance therefor, and it is agreed that this act need not be recorded in the mortgage office.

287 By reference to the annexed certificate of the recorder of mortgages for the parish of Orleans, dated 23d day of January, 1868, it will be seen that there are no mortgages recorded against said property, except the draining privilege.

The said property having been exempt by law from taxation the production of tax receipts is not required.

Done and passed in my office, at New Orleans, the day, the

month, and year first above written, in the presence of Harvey M. Dibble and John F. Taylor, competent witnesses, domiciled in this city, who have hereunto signed their names with the said parties, and me, the notary, after due reading of the foregoing.

(Original signed) E. HEATH, *Mayor.*
" HENRY VAN VLECK, *Agent.*
" HARVEY M. DIBBLE.
" JOHN F. TAYLOR.
" HENRY C. DIBBLE, *Notary Public.*

Registered conveyance office, B. 93, fo. 590.
New Orleans, 14th February, 1868.
[SEAL.] (Original signed) F. S. ORMAUD, *D'y R.*

288 STATE OF LOUISIANA, *City of New Orleans.*

I hereby certify the above and foregoing to be a true and correct copy of the original act on file and of record in my office.

In faith whereof, I hereunto set my hand and affix my seal of office, on this 9th day of June, A. D. 1883.

[SEAL.] (Signed) M. VOORHIES,
Custodian Notarial Records.

Exhibit marked J. Filed ——, 1883.

By the Committee on Public Order.

That Ordinance No. 8079, A. S., adopted October 11th, 1882, authorizing and directing the mayor of the city of New Orleans to accept the proposition made to compromise and settle with the New Orleans, Mobile and Texas Railroad Company certain matters of controversy, by which the city agreed to dismiss an appeal in the case of The City of New Orleans *vs.* The New Orleans, Mobile and Texas Rail[road], No. 144 of the docket
289 of the Supreme Court of the United States, and the same is hereby repealed, and the contract signed, rescinded, and declared null, and the $40,000 received by the city shall be restored to the said company; and if the company refuses to accept such tender, that such legal proceedings as may be necessary shall be instituted.

Board of Liquidation.

Act No. 133 of 1880.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That for the purpose of liquidating, reducing, and consolidating the debt of the city of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said city is hereby created.

The said syndicate shall be chosen as follows: Two by the Governor of the State of Louisiana, two by the Lieutenant Governor, and two by the speaker of the house of representatives,
290 and the mayor of the city of New Orleans, the treasurer and the controller hereof, as hereinafter provided, shall be ex-officio members of said syndicate: *Provided*, That in case no change is made in the present city, the present commissioners of the consolidated debt shall act as ex-officio members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number—death, resignation, or otherwise.

SEC. 2. That the commissioners of the consolidated debt, or the city officers provided and named in section 1 of this act, and the syndicate hereby created, shall constitute a Board of Liquidation of the city debt; and the said board shall have exclusive control and direction of all matters relating to the bonded bebt of the city of New Orleans. The Board of Liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall be used only for the purpose of negotiation, or of exchange, as hereafter provided.

291 The said bonds shall be signed by the mayor and countersigned by the administrators of accounts and of finance, of such officer or officers as may be hereafter created to fill their respective functions.

They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four cents per annum from the date of said bonds, payable semi-annually on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the Board of Liquidation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payable, interest and principal, in lawful money of the United States, and the said Board of Liquidation shall be, and it is hereby, empowered and authorized to establish, in New York, Lon-
292 don, Paris, and Amsterdam, such agencies as they may see fit and desirable.

SEC. 3. That the Board of Liquidation of the city deblt be, and is hereby, authorized and empowered to retire and cancel the entire valid debt of the city of New Orleans, except the floating debt, created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to the purchase of such old obligations on such terms as may be agreed upon between the holders of the said old obligations and the Board of Liquidation: provided the new bonds shall not be sold for a less sum than eighty cents in cash on the dollar, and that no exchange shall be made at a

greater rate than fifty cents in new bonds per one dollar of the face value of the old obligation, with interest accrued thereon; and provided further, that the entire issue of new bonds, sold or exchanged as above provided, shall not exceed, in all, ten millions of dollars.

293 SEC. 4. That should any obligation of the city of New Orleans be deemed fraudulent or invalid by any member of the Board of Liquidation, the same shall not be purchased, exchanged, or retired, until the holder of the same shall have applied to the proper court for relief, when, if final judgment be in his favor, it shall be deemed to be a valid obligation of the city; and should any member of the Board of Liquidation knowingly audit, fund, purchase, or retire for value any illegal obligation of the city of New Orleans, or shall use any of the bonds herein authorized, or the proceeds thereof, or any of the city's assets, or property in the hands of the Board, by virtue of this act, for purposes other than those contemplated in this act, he shall, on conviction thereof, be punished by fine of not less than one thousand dollars and imprisonment at hard labor for not less than one year.

SEC. 5. That it shall be the duty of the city authorities,
294 as soon as possible, after the organization of the Board of Liquidation of the city debt, to turn over and transfer to the said board all the property of the city of New Orleans, both real and personal, not dedicated to public use; and the Board of Liquidation shall be, and is hereby, empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agents of the Board at credit of "city debt fund."

SEC. 6. That nothing in this act shall be construed as affecting or in any manner impairing the act 31 of 1876, commonly known as the premium bond act; but it will be the duty of the city authorities to turn over and transfer to the Board of Liquidation of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium bond act; and it shall be the duty of the Board of Liquidation to apportion the proceeds of said tax and apply the same pro rata and in the proportion which each form of bonded debt shall bear to
295 the entire of the city's debt, and such portions of the said proceeds of tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest on the bonds created under this act.

SEC. 7. That it is hereby made a felony, punishable on conviction by fine not exceeding five hundred dollars, and imprisonment at hard labor not exceeding ten years, for the fiscal agent or any member of the Board of Liquidation of the city debt to di-

vert or misappropriate any portion of the debt and interest fund herein created from its legitimate channel as provided.

SEC. 8. That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the Board of Liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the city of New Orleans heretofore created at the rate not exceeding fifty cents per dollar, or at the discretion of the Board, for the retire-
296 ment of the bonds created under this act at a price not exceeding par, and the bonds or obligations purchased, exchanged, or retired, shall be cancelled and destroyed by the said Board of Liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans and in the presence of such witnesses as may desire to attend.

A process verbal of the same, giving the amounts, numbers, dates, and other particulars for identification of the obligations destroyed shall be made out and sworn to by a majority of the Board of Liquidation, and published within ten days of such destruction in the official journal of the city of New Orleans.

SEC. 9. That the Board of Liquidation is required and empowered to open, keep, and regulate a special book of registry of bonds of the consolidated bond series of 1880, as follows, to wit: Any holder or owner of any of the former or old bonds of the city, issued previous to the passage of this act, upon sur-
297 rendering the same for cancelment, according to the provisions of this act, shall be entitled to have the amount and number of bonds due him registered in said book in such manner and form as the Board of Liquidation may determine and prescribe, whereupon, instead of giving to said party a new bond, as contemplated by the preceding sections of this act, the Board of Liquidation shall grant to such party a certificate of registry, in such form as said Board of Liquidation may determine and prescribe, and said certificate to be transferable, in person or by proxy, on the records of the book of the Board of Liquidation, and the semi-annual interest on the amount of said certificates, instead of being represented by interest coupons, shall be payable to such party or his order in such form and manner as said Board of Liquidation may determine and prescribe, and the city of New Orleans shall cause a sufficient number of blank certificates of registry to be printed or engraved in the form and manner prescribed, and shall deliver said blanks to the Board of Liquidation, to be used agreeably to this section.

298 SEC. 10. That it shall be the duty of the council of the city of New Orleans to provide a proper office for the Board of Liquidation of the city debt, but the expenses of engraving, printing, and issuing, the Board created under this act, and all the necessary clerical and office expenses shall be paid

out of the funds appropriated and belonging to the payment of interest and principal of the said bonds: Provided no member of the Board of Liquidation shall receive any salary or emolument of any kind for his services therein.

SEC. 11. That the city council be, and is hereby, required to levy an annual tax, calculated on the assessments of the preceding year, less twenty per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of this act, and any tax levied shall continue in force until superseded by a new levy for the same purpose.

299 No. 58. An act entitled an act to authorize the city of New Orleans to renew and extend payment of her outstanding bonds, other than premium bonds, to provide the rate of interest on the bonds as renewed or extended, and authorize the levy of a tax to pay the same.

Whereas, under article 48 of the constitution, notice of intention to apply for the passage of this act has been duly published in the city of New Orlean, for thirty, as required, and,

Whereas the present financial embarrassment of the city of New Orleans threatens, further, to depreciate the value of property, to increase the sum of its indebtedness, and to impair good government of its affairs, and whereas litigation has resulted disastrously for the tax payer, and whereas the public creditors of said city of New Orleans have indicated a desire to settle their claims equitably, and to postpone the payment of certain bonds, in order to lighten the burden of taxation, and
300 whereas the constitution contemplates a definite termination of the corporation's embarrassment by special legislative enactment.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That the city of New Orleans, acting through the Board of Liquidation of the city debt, or other duly authorized officers, be, and she is hereby, authorized and empowered to extend the bonded indebtedness of said city, other than premium bonds, outstanding at the passage and promulgation of this act for the period of forty years from January 1st, 1883, at a rate of interest not exceeding six per cent.; provided, the city shall have the right to call in said bonds, so renewed or extended, for payment at par after the year 1895, upon giving notice to that effect during a period of three months.

SEC. 2. Be it further enacted, etc., That the provisions of the foregoing section be, and they are hereby extended to all
301 bonded obligations of the city, except premium bonds, whether due or to become due, including such as may have been merged into judgments, but for which no tax, special or otherwise, has yet been levied: Provided, nothing in this act

shall be considered as a waiver of prescription, which may be accrued or may accrue on such bonds in favor of the city.

SEC. 3. Be it further enacted, etc., That to each bond, extended or renewed, a certificate or annex, signed by the mayor and the administrator of finance or treasurer of said city, shall be securely affixed, which certificate, in express terms, shall import an obligation on the part of the city to pay the principal of said extended bond in forty years from a date not later than the first of July, 1883, with interest as aforesaid; and said certificate shall fully and accurately describe the bond to which it is affixed, and the coupons of interest thereon not yet matured, and shall be of no effect unless accompanied by said bond, which shall be stamped to
302 correspond with the number and description of the certificate; and an accurate registry shall be kept recording both bond and certificate; and if the bonds to be renewed have been merged in judgment, a certificate of full satisfaction and renunciation of all rights under the judgment shall be attached, and the judgment cancelled and annulled in the records of the court, and on the books of the department of accounts or comptroller, if it has been registered under act 5 of 1870. Coupons of interest payable at the rate of three per cent, semi-annually, shall be attached to and delivered with said certificate, and shall relate to the dates of maturity of the coupons on the extended bonds, beginning with the earliest coupon maturing after January 1st, 1883, and continuing during the period of forty years; provided that no bonds shall be extended unless all the unmatured coupons falling due after January 1st, 1883, are attached thereto: and
303 provided further, that the coupons of the extended bond shall be surrendered, with the corresponding coupons of the certificate, when the latter coupons are paid.

The said certificates shall be numbered in the order of the applications therefor, and when called in for payment under the operation of the city's option, the last and highest numbers outstanding shall be called first, and interest thereon shall cease at the maturity of the said call. The said extension, during its continuance shall interrupt all prescriptions of every kind on said bonds or coupons, and shall not operate any novation thereof, nor shall it be deemed in any manner as altering, weakening or impairing the original contract, obligations aforesaid, or the rights and remedies of the holders thereof, under pre-existing laws or constitutions, so that in case of default, or nonpayment at any time after due demand of the interest stipulated and agreed upon, or of failure to pay the principal thereof
304 when due, then in that case the extension of time granted for the payment of the principal of said bonds, and the interest shall, *ipso facto*, be null and void, and of no effect, and the holder or holders of said bonds shall be restored to all his or their original rights and remedies, and be entitled to claim and

enforce payment of interest at the time and rates originally stipulated, and payment of the principal at maturity, in accordance with and under the laws by which said bonds were originally issued and in force at the time of their creation, as if no such extension had ever been stipulated or agreed upon, as herein provided.

SEC. 4. Be it further enacted, etc., That in order to provide for the payment of matured coupons of outstanding bonds, up to and including January 1st, 1883, for which no tax has been levied, the city of New Orleans, acting through the said Board of Liquidation of the city debt, be and is hereby empowered
305 and instructed to deliver to the holder of any valid coupons issued by the said city of New Orleans, matured or to fall due prior to January 2d, 1883, and for which no judgment tax shall have been levied, a certificate importing an obligation to pay the sum of the face of said coupons and the interest thereon, at the rate of six per cent. per annum from maturity thereof, until January 1st, 1883. Said certificate shall be dated January 1st, 1883, and be payable in ten years from date, or sooner, at the option of the said city; it shall accurately describe the coupon or coupons in exchange for which it is to be delivered, and said coupons shall first be deposited for safe keeping with the said Board of Liquidation, and an accurate registry shall be made by said board of both the coupons and the corresponding certificates. The said registry shall carefully note the date and number of each deposit of coupons, as aforesaid, in the order of deposit, and the corresponding certificate shall be numbered suc-
306 cessively in the same order and without regard to the time of actual issue.

The option of redemption reserved to the city shall begin on January 1st, 1884, the last and highest numbers of the certificate being first redeemed, and all to be redeemed successively in the the same order.

One month's public notice shall be given by said city of the amount and numbers of the certificates it will cause to be redeemed.

The said certificates shall bear interest at the rate of three per cent. semi-annually until paid, to be represented by coupons attached to and numbered identically with said certificates; provided that said interest shall cease upon any certificate one month after notice as aforesaid shall have been published that the certificate will be paid. Said certificate shall be negotiable and transferable by delivery only without endorsement, and shall invest the holder thereof, with all the rights, remedies, and privileges of the original holders of the coupons in exchange for which they were issued; and in case of non-payment of
307 either the interest or principal of said certificates punctually when due, the holder may immediately, without fur-

ther process of law, recover from the city the coupons originally deposited as aforesaid, and may thereupon proceed against the city under the original bond contract, without the operation of any prescription or novation, and as is provided in section 1 of this act, in the case of the extension of outstanding bonds.

SEC. 5. Be it further enacted, etc., That in view of the enforcement, by judicial process, of the payment of past due bonds and coupons, with interest and costs, the city of New Orleans is hereby authorized and directed, in order to provide for the punctual payment of the interest and principal of all outstanding bonds and certificates for matured coupons extended, as provided in section 3, except premium bonds, to levy on all property within its territorial limits, liable to taxation for other purposes, at the same time and in the same way and on the same tax bill, and to be enforced and collected as are the ordinary city taxes,
308 an annual tax sufficient to pay punctually the interest on all outstanding bonds and extended coupons as aforesaid when due, which said tax shall never exceed one-half of one per cent. nor be less than one-quarter of one per cent. on the assessed valuation of all taxable property as aforesaid, and the proceeds of said tax shall be duly turned over as collected to the Board of Liquidation of the city debt, in the same manner as the premium bond tax, to be by them deposited to the credit of the city debt fund, and to be exclusively applied to the objects and purposes of this act.

SEC. 6. Be it further enacted, etc., That all funds now, or that may be at the time of the passage of this act, in the hands of the Board of Liquidation of the city debt, under existing laws, shall be deposited with the fiscal agent of the Board to the credit of the account known as the city debt fund, which fund shall be applied exclusively to the purchase, on the most favorable terms, not exceeding par of the face value of any of the out-
309 standing bonds or coupons, and the certificates therefor of said city, which are extended to be retired under the provision of this act; provided, that said city debt fund shall be used first to provide for and pay the interest on the bonds and certificates contemplated herein, and it shall be the duty of the council, in its annual budget, to make an appropriation to carry out the provisions of this act.

SEC. 7. Be it further enacted, etc., That the surplus proceeds, if any, of the premium bond tax of each year remaining in the hands of the Board of Liquidation of the city debt, or surplus on hand at the time of the passage of this act, after all the drawn series, interest, and premiums thereon, exigible or due to the holders thereof, have been provided for or fully paid, shall also be deposited with the fiscal agent of the said Board to the credit of the account known as the city debt fund, and applied exclusively as provided in section 5.

310 SEC. 8. Be it further enacted, etc., That said Board of Liquidation shall render semi-annually to the mayor of the city of New Orleans, for publication, a full statement of its operations during the previous six months, and give a detailed statement of all property and moneys received and disbursed or disposed of within said period, and the purposes thereof.

SEC. 9. Be it further enacted, etc., That the city of New Orleans is hereby authorized, and it shall be its duty, to pass all necessary and proper ordinances, and to execute and sign all acts necessary to carry out the provisions of this act in relation to the settlement, adjustment, and extension of the bonded debt aforesaid, as contemplated herein with the holders thereof, as herein described and designated, and to prepare and perfect the certificates and coupons required, and otherwise to do and perform what is hereby required and directed.

SEC. 10. Be it further enacted, etc., That this act in all
311 its parts, provisions, terms, conditions, obligations, and limitations, is to be deemed and constitute a valid, binding contract between the State of Louisiana, the city of New Orleans, its residents, citizens, and taxpayers, and the holders of the bonds herein authorized to be extended; and the judicial process of the State of Louisiana, now authorized by law or in force at the creation of said bonded debt as aforesaid, may be resorted to, and is to be recognized and applied to the judges thereof for the enforcement of its provisions in favor of any party having and showing just cause for complaint or injury or a violation of any of the provisions thereof.

SEC. 11. Be it further enacted, etc., That it is hereby made a felony—punishable with fine not exceeding $5,000, and imprisonment at hard labor not exceeding five years—for the fiscal agent, the mayor, or any other officer of the city of New Orleans, or of its clerks, subordinates, or employees of any description
312 whatever, to feloniously misapply, misappropriate, or embezzle any of the funds, taxes, assets, or property designed in this act to liquidate and pay said bonded debt, or the interest thereof, or to divert the same or any part thereof from the legitimate use and purpose herein provided, and such person or persons, on conviction thereof according to law, shall be punished accordingly.

SEC. 12. Be it further enacted, etc., that any legal proceeding instituted to prevent, hinder, delay, or obstruct the operation of this act, or any of its provisions, in whole or in part, after its promulgation as a law, shall be tried summarily and by preference over all other causes or proceeding, whether the court having jurisdiction be in vacation or not; and if appealed to the supreme court of the State of Louisiana, it shall be tried and determined by preference, whether said court be in regular session or in vacation; and it is hereby made the duty of

313 the judges thereof, if in vacation, to determine the controversy within the least delay, and the decree pronounced shall become final on the twentieth day thereafter, unless a rehearing be granted, in which latter event the cause shall be heard *de novo* and determined by said court, and the decree pronounced thereon shall become final then without further delay.

SEC. 13. Be it further enacted, etc., that this act shall take effect from and after its passage, and all laws or parts of laws inconsistent or in conflict therewith be, and the same are hereby, repealed.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) GEO. L. WALTON,
President pro tem. of the Senate.

Approved June 30, 1882.

(Signed) S. D. McENERY,
Governor of the State of Louisiana.

A true copy.

(Signed) WILL A. STRONG,
Secretary of State.

314 *Application of the Board of Liquidation to the Supreme Court of the United States.*

THE CITY OF NEW ORLEANS } No. 17
vs. } U. S.
THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD CO. } Sup. Ct.

On motion of Henry C. Miller, of counsel for the Board of Liquidation of the city debt of New Orleans, a corporation created by act number 133 of the Legislature of Louisiana, charged by said act with all duties connected with the city debt and its settlement, and upon suggesting that to effect said settlement said act transfers to said Board all property of the city of New Orleans, both real and personal not dedicated to public use, which the Board is directed to dispose of and to apply the proceeds to pay said debt, as appears by the 5th and 8th sections of said act, as well as by the act No. 58 of the Legislature of Louisiana of 1882, copies whereof are herewith filed, and upon showing
315 to the court that this suit involves certain real estate of the city, forming part of the assets transferred to said Board by said act number 133, and involves also the competency of certain legislative acts by which the Legislature undertook to grant said real estate to the appellee, the New Orleans, Mobile and Texas Railroad Company, the validity of which acts the city contested, and upon further showing that the right of said Board to said real estate has arisen since the appeal herein was taken, and notwithstanding that the city is divested by said act No. 133 of

all power or right to dispose of said property, it has stipulated to dismiss this appeal for the consideration of forty thousand dollars, as appears by the document herewith filed, marked "C," and on further showing that the Board of Liquidation by reason of its interest in the subject-matter, is entitled to be admitted as a party to the record to maintain this appeal and resist the dismissal thereof.

316 It is now ordered that the appellant and appellee show cause on October, 1882, why said Board of Liquidation of the city debt should not be admitted as the appellant herein to maintain and prosecute this appeal.

317 *Opinion of the Supreme Court of Louisiana in Case No.* 3701.

Supreme Court of the State of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *May 4th*, 1874.

NEW ORLEANS, MOBILE, AND CHATTANOOGA R. R. Co.
vs.
THE CITY OF NEW ORLEANS. } No. 3701.

Appeal from the ——— District Court for the Parish of ———.
Certified copy of opinion and decree.

On application for rehearing, Mr. Justice Howell delivered the opinion and decree of the court in the words and figures following, to wit:

The plaintiffs' company enjoined the city of New Orleans from leasing or selling and from interfering with plaintiffs in occupying and enjoying, holding, and acquiring certain lands granted to the plaintiffs and described in the following clause of section 15 of act No. 26 of 1869, to wit: "And there is hereby granted to

318 the said company the right to locate, construct, maintain, and use a passenger depot, with office and apartments suitable for its legitimate business, upon the part or portion of the levee or streets and grounds, in the city of New Orleans, bounded by Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot, and for other purposes of its legitimate business, to enclose and occupy the blocks of ground, parts of streets, and portions of levee, in said city, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street: *Provided*, said company shall not enclose or occupy that part or portion of the blocks of ground within said last-named limits, which is the private property of individuals, until said company has acquired title thereto."

The plaintiffs allege that they have acquired by purchase all

of the private property within the boundaries of the said grant.

319 The only answer filed by the city to the original and supplemental petitions of plaintiffs in this suit is a general denial, the other answers are to the intervention of Chas. Morgan, and this branch of the suit has been disposed of, and it is not before us; but the question presented and discussed by both parties is the right of the State to make the said grant, the city claiming to be the owner of the said ground, subject only to a servitude in favor of the public as long as it may be needed for public purposes, and the State asserting absolute ownership and control of the lands as *public places*. If they be *public places* in the ordinary, legal, signification of these words, it may be that the State has the control asserted. We will here inquire into the rights of the city to the lands.

In 1820, the batture in that part of the city was owned or claimed by the heirs and assignees of one Bernard Gravier as riparian proprietor, and there being some difficulty with the city as the ownership and use thereof, the parties interested entered into a compromise by notarial act in September of that

320 year, by which it was stipulated that all lots of ground outside of a certain line should remain inalienable, and be used for no other public purposes than these for which they are naturally destinated. When, in 1836, the city was divided into municipalities, it was provided that no disposition should ever be made of said batture in violation of said compromise, and that the second municipality, in which it was situated, should not obstruct the inhabitants of any portion of the city in the free use thereof. By the continued accessions this space of ground became inconvenient for public use, and in 1850 the Legislature repealed that portion of the act of 1836 prohibiting any disposition thereof, authorized and directed the second municipality to lay off two additional streets, according to a certain plan, declared that the balance of the batture should be left open, and so kept for the accommodation of the public and the convenience of commerce, and that in the event of the agreement of the original parties to the said compromise for the sale of the said *batture*,

321 it should be the duty of the second municipality to lay off in lots, all not needed for streets and public purposes, as above, and dispose thereof on terms to be agreed on; provided one-third of the proceeds should be appropriated to the general sinking fund of the city.

In pursuance of this act, the said parties, with the second municipality, which was represented by a committee, agreed, by notarial act on 20th June, 1851, to change the destination of the said batture made in the compromise of September, 1820, that these streets should be laid out, certain squares divided into lots and sold at auction within different periods of time and on speci-

fied terms, which sale should be binding on the parties then contracting with the second municipality as vendors, then the proceeds be divided into three parts—one to be paid to the said original parties, one to the general sinking fund of the city, and the other into the treasury of the second municipality; that these specified squares be reserved for market-houses and what
322 portion not divided into lots for sale should be, in the language of the act, vested in perpetuity and full ownership in the said municipality No. 2, in favor of whom the said parties then contracting therewith ceded and relinquished forever all their claims in and to the said batture as well as all and every enlargement thereof or accretion thereto by new formations.

It is by this act, it is contended, the city, which has succeeded to the rights of the second municipality, acquired the title to and *full* ownership of the ground now in controversy.

The title, it would seem, was thereby vested in the city so far as the original owners, parties to the above act, could confer it, and the property is under the exclusive control of the city as owners for the benefit of the inhabitants and subject to the servitude in favor of commerce, if needed, unless there is in law some such relation between the municipal corporation and the State as makes all property acquired by the corporation the property of the State, subject to its control.

323 Is this so? A municipal corporation is appropriately defined to be "the investing the people of a place with the local government thereof," (Salk., 183.) It has no powers not conferred upon it expressly, or by fair implication, by the law of the State creating it, or statutes applicable to it. Both the persons and the place inhabited by them, are indispensable to the constitution of such a corporation. It is an agency to regulate and administer the internal concerns of a locality in matters peculiar to the place incorporated, and not common to the State or people at large; but duties and functions may be, and are, conferred and imposed not local in their nature. It possesses two classes of powers and the classes of rights—public and private. In all that relates to one class, it is merely the agent of the State, and subject to its control; in the other, it is the agent of the habitants of the place, the corporators, maintains the character and relations of individuals, and is not subject to the abso-
324 lute control of the legislature, its creator; among this latter class is the right to acquire, hold, and dispose, to sue and be sued, etc.

It is true, that these rights are originally derived from the legislature; but, once conferred, they are to be exercised, while it exists at the will of the corporation, in its own, and as to its own, interest, for the inhabitants; just as certain rights are conferred on private corporations and persons not *sui juris*, as minors and married women, but are not afterwards under the control of the

legislature. Dillon on Municipal Corporations, 2d ed., chap. II, §§ 9 A to 10 A. Chap. IV, §§ 38, 40, and notes. Cooley's Constitutional Limitations, pp. 235–6, 238.

In § 39, Mr. Dillon says:

It may assist to an understanding of the extent of legislative power over municipal corporations proper, (incorporated towns and cities,) to observe, that these, as ordinarily constituted, possess, according to many courts, a double character—the one *governmental, legislative* or *public;* the other, in a sense, *proprietary*, or *private.*

325 The distinction between these, though sometimes difficult to trace, is highly important and is frequently referred to, particularly in the cases relating to the implied or common law liability of municipal corporations for the negligence of their servants, agents, or officers in the execution of corporate duties and powers.

In its governmental or public character the corporation is made by the State, one of its instruments or the local depository of certain limited and prescribed political powers, to be exercised for the public good, on behalf of the State, and not for itself.

In this respect it is assimilated in its nature and functions to a country corporation which, as we have seen, is purely part of the governmental machinery of the sovereignty which creates it; over all its civil, political, or governmental powers, the authority of the legislature is, in the nature of things, supreme and without limitation, unless the limitation is found in some

326 peculiar provision of the constitution of the particular State. But in its proprietary or private character the theory is that the powers are supposed not to be conferred peculiarily or chiefly from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct *legal personality*, and as to such powers and to property acquired thereunder, and contracts made with reference thereto, the corporation is to be regarded as *quo ad hoc*, a corporation, or, at least, not public in the sense that the power of the legislature over it is omnipotent.

Mr. Cooley, at page 238, says:

"The rule upon the subject we take to be this, where corporate powers are conferred there is an implied compact between the State and the corporators that the property which they are given the capacity to acquire for corporate purposes under their charter shall not be taken from them and appropriated to other uses. If the State grants property to the corporation, the

327 grant is an executed contract which cannot be *in*voked.

"The rights acquired, either by such grants, or by any

other legitimate mode in which such a corporation can acquire property, are vested rights, and cannot be taken away."

In 29 Vermont, p. 12, it was said: "But while the legislative power to enlarge, restrain, or even destroy, municipal corporations, as the public interest may require, may be exercised over public municipal corporations, it has uniformly been held that towns and other public corporations may have private rights and interests vested in them under their charter, and as to these rights they are to be regarded and protected the same as if they were the rights and interests of individuals or private corporations."

In 18 Cal., 590, Mr. Chief Justice Field, as the organ of the court, takes the ground that the real estate or private property of a municipal corporation is protected by the clause in the National Constitution securing the inviolability of con-
328 tracts; that all legislative authority over it must be exercised in subordination to this guaranty, and that is subject to legislative control to the same extent, but no greater extent, than all other property in the State.

In 9 Cranch, (U. S.,) 336 and 52, Mr. Justice Story expresses the opinion that "in respect to public corporations, which exist only for public purposes, such as counties, towns, cities, etc., the legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them, securing, however, the property for the uses of those for whom and at whose expense it was originally purchased."

This is reiterated by Chancellor Rout, 2 Com., 305, and by Mr. Justice Washington in Dartmouth College Case, 4 Wheat., 518, 663.

In this last case Mr. Justice Story, at page 694, says: "But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendant that it may, at its will, take away the private property of the corporation, or
329 change the uses of its private funds acquired under the public faith.

In 18 L., 213, it is said certain property fronting on a water course is entitled to alluvion as well as rural estates, and cities may require *jure alluvionis*, but it must be as proprietor of the front, or riparian proprietor. See also 10*a* 54 and 7*A*, 505.

We are aware that very different views have been expressed, by very high authority and that some of the authors are jurists, from whom we have quoted, have used language susceptible of a different construction, and declare the division of munincipal powers into public and private unsatisfactory, but after a careful consideration of the opinions of both sides, we have come to the conclusion, that a municipal corporation may own property to and over which the legislature has, while such corporation exists, no right, or control, in opposition to or independently of

the will or consent of the corporation, and we think this is consonant justice.

330 There is a principle involved in it. The principle that those who have to pay should have a voice in the disposal of what is paid for; a principle which is a barrier to centralized or organized power; a principle that protects every person in the control of his private affairs; a principle which the judiciary is intended to maintain.

The theory or argument that the legislature has absolute ownership and control of all the property and rights of a municipal corporation because the corporation is represented in the legislature is not conclusive.

Such representation is only in matters properly within legislative action, just as the representation of all other portions and inhabitants of the State.

The private rights of the corporation are as much protected as those of individuals. And it is a fact, manifest to all, that the incorporation of such a city as New Orleans is a necessity. The multiplying and complicated interests of the compact and

331 increasing community are such that the Legislature cannot administer them, and some of them are of such a nature as not to be within mere legislative action, but are to be conducted under general rules; thus necessitating the creation of an intellectual body, with something more that governmental functions, but which does not constitute an *imperium in imperio.*

If, then, a municipal corporation can acquire the fee simple of property, we think the squares intended for the depots of the plaintiffs were so acquired, and this cannot be taken by the legislature while the city corporation exists.

The legislature expressly recognized and satisfied the compromise of September, 1820, in which the parties awarding or destinating acted as *riparian proprietors*, and in that act 257 of 1850, the section of the act of 1836, prohibiting the violation of said compromise was repealed, and the municipality No. 2 was authorized to enter into an agreement with the said parties "for the sale of the said *batture* on certain conditions, which

332 were complied with."

If it be urged that the third section of said act of 1850 required the portion not laid off into streets to be kept open forever for commerce, the answer is that act No. 333 of 1853, authorized the withdrawal therefrom of such as may be needed for public uses, and this has been done by the city (which cannot sue itself) in the subsequent laying off of other streets and selling two and a half squares in the block of squares nearest the river, and which have been purchased by the plaintiffs, all this is recognized by the legislature in the act under which plaintiffs now claim, by requiring them to purchase, and by them in making the purchases. While this legislation may be construed as making such

recognition, it can be invoked in aid or support of the power to make this grant, only on the theory that the city owned the progerty, simply as the agent of the State, a theory which we do not adopt as to this property, because we think the city
333 can own private property, and that the former owners intended to and did by the act of 20th June, 1851, transfer the title thereof to the city, subject only to the uses of commerce and of the public, which so needed. And such must have been the opinion of the plaintiffs when they made the offer, which they allege, to purchase a part of this very ground from the city about the time this suit was instituted, and their petition seems to be constructed on the hypothesis that the city had such rights to the said property, as to make a resort to the laws relative to expropriation necessary.

The act of 1850, may have been necessary to give the municipality No. 2, the authority to enter into an agreement with the owners, but the power having been exercised and the conditions complied with the title of said parties (*which was recognized in the said act*) vested by the notarial act of June 1851, as we think, in the municipality, which then took the place of the said
334 former owners, with all their rights including the right to bring into commerce such portions as might become necessary for public use.

It is contended, however, that the case Parish *vs.* Municipality, 8 A, 145, fixes the character of the ground, in question, as a *locus publicus*, in the technical sense of this term, and intimates that so much of the act of 1850, as may confer any rights upon the municipality is unconstitutional. An examination of that case will show that the matter in controversy was the servitude of river, and was claimed by the plaintiff and that the case went off on an exception, that plaintiff had no cause for action. The right therein asserted, of the legislature to change the destination of a portion of the batture previously dedicated to the public use, is not denied, but this is not inconsistent with the right of the riparian proprietor, to sell his property and his right, or that of his vendor to withdraw that property from the position of a *locus publicus* when not needed as such, under existing
335 legislation.

The antecedent cases had reference to the legislation and the rights of parties thereunder, prior to the act of 1850, and the transfer of June, 1851, under which the rights of the city have been acquired. But in these cases the rights of riparian proprietors to the batture were recognized, subject to a public survitude, and the ownership of the city as against said proprietors, was denied. Judge Martin, however, in 18 L., 249, contended that the formations in front of the city did not belong to the owners of the lots along a certain line, but vested in the city, and he insisted that his views were sustained by the decision of the United

States Supreme Court, in 10 Peters, 662. The majority of the court decided in favor of the riparian proprietors, and we thtnk these parties have conveyed their rights to the portion of the batture now in controversy, to the city for its inhabitants; that these rights are protected by the constitution now, just as those of the former owners were, the city having the capacity
336 to own property for the exclusive use and benefit of the inhabitants, and having acquired all the rights of the former owners, and *and* that the city or [its] inhabitants cannot be compelled to contribute the squares of ground in question to the plaintiffs without compensation, whether they will or not make such contribution voluntarily in consideration of the benefit resulting from the establishment of the railroad is a question not pertinent here; we are to pass only on the legal rights of the parties.

In our opinion, the injunction improperly issued in this case. But as the city has made no claim against the plaintiffs, our former decree was erroneous in granting the demand in reconvention, and inhibiting the plaintiffs from occupying the property in controversy. Under the pleadings, all we can do is to render judgment in favor of the city, dissolving the in-
337 junction and dismissing plaintiff's suit, leaving the parties to the rights under the laws relative to the expropriation of property.

It is therefore ordered that our former decree be set aside, and it is now ordered that the judgment appealed from be reversed, and that there be judgment in favor of the defendant, The City of New Orleans; dissolving the injunction herein and dismissing plaintiff's suit with costs in both courts, without prejudice to the rights of the parties under the laws of expropriation.

Mr. Justice Wyly concurs in this decree for the reasons given by him in the former opinion of the court.

A true copy.

(Signed) WM. DUPRE, *D'y Clerk.*

338 *Testimony for Defendants. Filed June* 9, 1883.

United States Circuit Court, Fifth Circuit, Eastern District of Louisiana.

THE BOARD OF LIQUIDATION
versus
LOUISVILLE AND NASHVILLE RAILROAD COMPANY. } No. 10180.

Testimony taken on behalf of defendants, under the 67th rule as amended of the courts of equity of the United States, before F. A. Woolfley, special examiner, duly appointed and qualified, to take the deposition of witnesses in the above-entitled cause, by

consent of parties. New Orleans, June 6, 1883. Present, Thomas L. Bayne, Esq., solicitor for defendants, Henry C. Miller, Esq., solicitor for complainants.

Mr. Bayne, on behalf of defendants, offers in evidence the record in the case No. 19 of the docket of the eighth district court for the parish of Orleans, the answer of the city with reconvential demand, and the opinion, decree, and judgment of that court.

Also, the decree and judgment of the supreme court of the State of Louisiana in the case No. 3692, reported in
342 the 26th annual reports from page 517 to 529.

Also the decree of the circuit court of the United States for the eastern district of Louisiana, in the case of the New Orleans, Mobile and Texas Railroad Company against the city of New Orleans, No. 7972, which is now No. 17 of the docket of the Supreme Court of the United States.

Mr. Miller, for complainants, pleads to the offer of the records No. 3692 and 7972, except so far as the offer embraces all of the pleadings and judgment therein rendered.

Defendants also offer in evidence the ordinance No. 7483, being grants to the Northeastern Railroad Company, and ordinance No. 6824 of January 21, 1883, as to illuminating gas.

Adjourned to Thursday, June 7th, 1883, at 10 o'clock a. m.

343 NEW ORLEANS, *June 7th*, 1883.

THE BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY. } No. 10180.

Testimony for defendants resumed this day, as per adjournment.

Present: Thomas L. Bayne, Esq., solicitor for defendants; Henry C. Miller, Esq., solicitor for complainants.

Mr. Bayne offers in evidence on behalf of defendants the testimony of R. W. Rogers and E. E. Godwin, page 27 to page 30, in the printed record of the case No. 17.

It is agreed that the record No. 17 of the Supreme Court of the United States formerly No. 144 of the Supreme Court of the United States being the case of The City of New Orleans,
344 appellant, *versus* The New Orleans, Mobile and Texas Railroad—that is to say, all the pleadings both in the State and Federal courts embraced in that record and relied upon by either side, and all the testimony contained in that record 144 shall be taken to be in evidence in this case and copied from the printed record, in the event that an appeal becomes necessary, with the understanding that it is subject to objections on the

part of the defendant; that the issue in this case is restricted by the order of the Supreme Court of the United States merely to the ascertainment of the right of the Board of Liquidation to be substituted as appellant.

And the said order of the Supreme Court of the United States is offered in evidence by the defendants in this connection.

And on the part of complainants the objection is reserved to any objections to the testimony other than that of the form
345 it is presented; both sides to have the right to restate objections to the testimony on the trial, should they deem proper.

Defendants also offer in evidence the act of the Legislature of 1870, being the city charter of the city of New Orleans.

Also the charter of the city of New Orleans contained in the act of 1852, and the act No. 20 of 1882, continuing said charter.

Also the act No. 81 of 1882.

And it is agreed, as heretofore, that these acts may be read from the statutes without being copied, and particularly in the act No. 20 of 1882. Section No. 8, defining the power of the city council; and section No. 28, and section No. 66, and section 78, repealing all laws inconsistent, being approved January 23d, 1882, and promulgated.

Defendants also offer in evidence the act No. 28 of 1868, chartering the New Orleans, Mobile and Chattanooga railroad, with the act of the State of Alabama, referred to therein.

346 The act No. 26 of 1869, the act 31 of 1870, and the act No. 94 of 1871.

Also, the ordinance No. 1755, old series, page 96 Jewell's Digest, describing the commissioners of the consolidated debt and their duties.

Defendants also offer in evidence the ordinance of the city of New Orleans, approved June 17, 1869, with a memorandum of the acceptance of the same by the company, June 24, 1869, and the notice of the same being sent to the mayor on June 26th, 1869.

Ordinance No. 7009 *of the City of New Orleans. Jewell's Digest, pages* 404, 405.

ART. 70. (1.) That the New Orleans, Mobile and Texas Railroad Company, as reorganized, their assigns and successors be, and they are hereby authorized, to construct, maintain, and use other portions of their road, the tracks shown upon the map, at and between Poydras and Bienville streets, and the requisite right of way therefor along and cross streets is hereby granted and confirmed to the said New Orleans, Mobile and Texas Railroad Company, as reorganized, its assigns and successors. When
347 the new tracks are constructed that part of the old track now in use as indicated on said map and between said

streets, shall be removed further away from the bank of the river so as to enlarge the space on the levee.

ART. 71. (2.) That the use and occupancy of a certain portion of ground situated on the north side of Canal street, eighty feet wide on Canal street, by two hundred and sixty-seven feet long, running in parallel lines toward Custom-house street, for a passenger depot, to be constructed by said railroad company, according to the plan submitted herewith, is granted to said New Orleans, Mobile and Texas Railroad Company, reorganized, its assigns and successors for thirty years, with the privilege of renewal for a like term. The city will immediately have removed so much of the present structures on said ground as the railroad company may desire.

ART. 72. (3.) And in consideration wherefor, said railroad company agrees and binds itself to pave with square blocks of stone, the space of ground between the north end of said
348 depot and Custom-house street, and indicated in the plan heretofore referred to, exclusive of the portion already paved, also paving a street to be laid off on the river side of said depot, thirty feet wide, extending from Canal to Custom-house street; also the lower end of Canal street, opposite the south end of said depot, a space of ground 80 by 100 feet; also to pay the city's proportion of price for paving the north side of Canal street, from the north curbstone of said street to the neutral ground in said street, extending as far up as Front street, being a space of about 300 feet long by 40 feet wide, whenever the property holders contiguous to the same shall apply for the pavement of said latter space of ground and pay their share of the price for the same.

ART. 73. (4.) That nothing in this ordinance contained, or in the act granting or accepting it, shall be construed as affecting any other grant by the city or State, nor to compromise, settle, or in any manner determine or affect any question now in controversy between the city of New Orleans and said railroad company, and neither party, as far as those questions are con-
349 cerned, shall be benefited or prejudiced thereby.

Extracts from Ordinances relating to the issuance of Old Consolidated Bonds.

Consolidated City Debt Taxes, etc.

ART. 328. He (the comptroller) shall sign, with the mayor and treasurer, all bonds issued by the commissioners of the consolidated debt of the city; and shall, in addition to the duties enumerated, perform such others as the council may prescribe.

Page 96, *Jewell's Digest, Ordinance No.* 1755, *Old Series.*

ART. 329. Whereas, the city of New Orleans is still interested in a large number of unsettled and unliquidated suits entered prior to the consolidation of this city, in the year 1852; and whereas, there may be expected to be found under due examination of municipal contracts and other documents and records, a number of just causes of claims against third parties, which claims lay unknown to the present government of the city, and which it is desirable and beneficient to discover, settle and liquidate.

And whereas, all sums accruing from the liquidation of said old suits, and the settlement of said unknown claims, could be properly applied to the extinguishment of the debts of the old city, and also of the debts of the city of Lafayette, incurred before the time of their consolidation in a single corporation;

And whereas, such old suits require special searches and laborious and unexceptional proceedings, which cannot be considered as incumbent upon the city attorney, nor making part of legal and regular duties;

And whereas, such unknown titles of claims against third parties require, if any there are, great exertions to be detected and determined, which exertions cannot be asked for from any of the regular officers of the city.

(1.) *Be it resolved,* That the Board of Commissioners of the consolidated debt of New Orleans are hereby empowered and authorized to terminate, settle and liquidate in the name of the city of New Orleans, by way of judicial proceedings, compromise or otherwise, with full power to act, to them granted hereby, for any such old suits not yet liquidated, in which the cities of New Orleans and Lafayette acted as plaintiffs, prior to the consolidation of this city, in the year 1852, either under the old corporation of the city of New Orleans prior to its division in three distinct corporate bodies in the year 1836, or under its existence into three municipalities before their consolidation in 1852, and also under the old corporation of the city of Lafayette, prior to the year 1852, and also under the old corporation of the parish or Orleans, and either in the name of said cities of New Orleans, or Lafayette, or in the names of the municipalities, Nos. one, two, and three, of the city of New Orleans, or also in the name of either the general council or the general sinking fund of the city of New Orleans, or also in the name of the police jury of the parish of Orleans.

(2.) That said commissioners of the consolidated debt of New Orleans are hereby authorized to secure the services of, and to contract with suitable persons to make the necessary searches, and complete such proceedings as may be necessary to liquidate and settle such old suits, and also to detect and discover such

title of unknown claims in which the city of New Orleans may be interested against third parties, but in which no action has been taken up to this date, and for which the said board of commissioners of the consolidated debt of New Orleans are hereby authorized to sue for and settle by way of compromise or otherwise in the name of the city of New Orleans.

(3.) That such persons, so selected by the said board of commissioners of the consolidated debt of the city of New Orleans, for the purpose of liquidating such old suits and discovering such unknown titles of claims, be entitled to receive by contract
353 such percentage out of the proceeds of the settlement of such old suits, or unknown claims, as may be agreed on by said commissioners, provided such persons bind themselves to take charge of all expenses or costs which may be incurred in consequence of the revival of such old suits; and in case the city of New Orleans should recover nothing from the same, and provided said contractors enter into bonds in the sum of ($10,000) ten thousand dollars, with good security, subject to the approval of said board of commissioners of the consolidated debt of the city of New Orleans, and so conditioned as to cover, secure, and exonerate the city of New Orleans against any eventual payment or disbursement of money for any of the causes aforesaid; and provided it will be well understood that said contractors shall have in no case anything to claim as a compensation for their services, or as reimbursement of their expenses or otherwise from the city of New Orleans. Ordinance No. 1759, approved
354 July 27th, 1854.

Act No. 81 of 1882, entitled an act to authorize the city of New Orleans in the sale or lease of franchise, or right of way for street railroads, or other privilege to apply the price paid for the same in the performance of works of public improvements of a permanent character, such as paving streets, embellishing parks, etc.

Whereas, notice as required by article 48 of the constitution has been given of the intention to apply for the passage of this act; therefore,

Section 1st. Be it enacted by the General Assembly of the State of Louisiana, That hereafter, whenever the city of New Orleans, through the proper authorities, shall contract with private corporations, or individuals, for the sale or lease of public privileges or franchises, such as the rights of way for
355 street railroads, or for other public undertakings within her legal power and control, the price paid for the sale or lease of public privileges or franchises shall be applied by said city in the performance of works of public improvement of a permanent character, such as paving streets, embellishing parks, etc.

SEC. 2. Be it further enacted, That all laws or parts of laws,

and especially so much of section 10, of act No. 31, acts of 1876, known as the premium-bond act, and by section 5, of act No. 133, acts of 1880, as may be in conflict herewith be, and the same are hereby, repealed.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) GEORGE L. WALTON,
President pro. tem. of the Senate.

Approved July 5th, 1882.

(Signed) S. D. McENERY,
Governor of the State of Louisiana.

A true copy.

(Signed) WILL A. STRONG,
Secretary of State.

356 *From act No. 20 of 1882.*

SECTION 8. The council shall also have power—

(1.) To order the ditching, filling, widening, opening, and paving of the public streets, and to regulate the grade thereof.

(2.) To regulate the public cemeteries, to order the manner of conducting the same, and to order the closing of same.

(3.) To compel the owners of any lot or lots to fill the same to a grade above the grades of the streets, and to construct drains or gutters.

(4.) To improve and embellish public squares and parks and places.

(5.) To prescribe and collect wharfage and levee dues, and to erect sheds over the wharves and buildings to protect merchandise, and to make such charges therefor as will pay for the construction, keeping in repair, lighting and policing of such wharves and sheds, and no more.

The council may lease or farm out the wharves and
357 landings in section for a period not exceeding ten years, to such persons as will bind themselves with security to construct and keep in good repairs such wharves and landings, and construct and keep in repairs sheds over the wharves, and light the same and pay for the cost of policing the same for such just and reasonable charges on vessels and merchandise, or either, for the use of the wharves and sheds as may be fixed in advance by the council, and with such specifications as may be required by them.

The council shall have power—

(6.) To compel the owners of property or tenants to keep their side walks in front of such property clean and in repair.

(7.) To prevent explosive and dangerous substances from being stored or kept in dangerous quantities in the city, to designate

the places where such dangerous articles may be stored, and to regulate the manner of hauling and keeping explosive substances.

358 (8.) To determine within what limit wooden buildings shall not be erected, and to prevent the reconstruction in wood of old buildings within such limits.

(9.) To regulate the safety, height, and thickness of the wallls and structures.

(10.) To determine what animals shall not be permitted to rove in the limits of the city, and to cause them to be killed, or to be confined and sold when found to be running at large.

(11.) To regulate the police at theatres, public balls, dance-houses, concert-saloons, taverns, hotels, houses of public entertainment, shops, or places for retailing alcoholic liquors, houses of prostitution and assignation, and to exclude such houses from certain limits; and shall have power to close the same, and to close houses and places for the sale of intoxicating liquors when the public safety may require it, and to authorize the mayor and police to close such places.

359 (12.) To close all gambling-houses and to expel from the city and to imprison all bunko men, fraudulent or unauthorized lottery men, common cheats and swindlers, beggars, and dangerous and suspicious characters.

(13.) Have the power to authorize the use of the streets for horse and steam railroads, and to regulate the same; to require and compel all lines of railway or tramway in any one street to run on and use one and the same track and turn-table; to compel them to keep conductors on their cars; and compel all such companies to keep in repair the street, bridges, and crossings through or over which their cars run.

(14.) To lay off and sell in lots and squares as much of the batture from time to time as may not be required for public purposes, but the right of accretion or to future shall never be sold; to establish jails, houses of refuge, reformation, and correction, and make regulations for their government, and

360 to exercise a general police power in the city of New Orleans.

Adjourned to Friday, June 8th, 1883, at 10 o'clock a. m.

NEW ORLEANS, *June 8th*, 1883.

BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE R. R. Co. } No. 10180.

Testimony on behalf of defendants resumed this day, as per adjournment.

Present: Thomas L. Bayne, Esq., solicitor for defendants; Henry C. Miller, Esq., solicitor for complainants.

Defendants offered in evidence opinion, etc., as follows :

EXHIBIT 1.

Supreme Court of the United States. October term, 1882.

THE CITY OF NEW ORLEANS, Appellant,
vs.
THE NEW ORLEANS, MOBILE AND TEXAS R. R. Co. } No. 17.

361 On motion, Mr. Chief Justice Waite delivered the opinion of the Court:

This cause was continued at the request of the parties on the 10th of October. The appellee now presents a stipulation for the dismissal of the appeal, signed by the city attorney of New Orleans, pursuant to the terms of a compromise of the [property] in dispute made with the city council, and asks to have the appropriate order entered upon that stipulation. The Board of Liquidation of the city debt of New Orleans comes to resist the entry of any such order, on the ground that during the pendency of the appeal in this court authority over the subject-matter of the controversy has been transferred from the city council to that Board, and that the compromise which has been effected is not binding. The Board also asks permission to prosecute the appeal in the name of the city.

362 It is conceded that the city council made the compromise which is claimed, and that the appellee is entitled to a dismissal of the appeal if the council had authority to do what it has done, and the compromise was fairly made. The dispute as to the authority of the council, presents questions too important to be settled summarily on these motions.

It is therefore ordered, That the cause and pending motions be continued until the next term, and that the appeal be then dismissed in accordance with the stipulation on file, unless the Board of Liquidation begin and prosecute, without unnecessary delay, in some court of competent jurisdiction, an appropriate proceeding to set aside the compromise which has been made [with] the city council.

(A true copy.)
Test:

____ _____,
Clerk Sup. Court U. S.

Also, a copy of the following stipulation :

EXHIBIT 2.

363 Supreme Court of the United States.

THE CITY OF NEW ORLEANS
vs.
THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD Co. } No. 17.

In accordance with the ordinance No. 7089, adopted by the city

council of New Orleans, on the 11th day of October, 1882, an the agreement signed by the mayor of the city of New Orleans acknowledging a compromise and settlement in accordance therewith, and an acquiescence in the judgment rendered by the circuit court of the United States for the district of Louisiana, as final, in favor of the New Orleans, Mobile and Texas Railroad Company, appealed, the appeal in this case is dismissed, and I respectfully ask that an order of the Supreme Court of the United States may be made accordingly.

New Orleans, October 11th, 1882.

(Signed) CHAS. F. BUCK,
City Attorney of the City of New Orleans.

(A copy.)

364 I respectfully concur in the application of the city attorney for the dismissal of the appeal.

(Signed.) THOS. L. BAYNE,
Atty. for the N. O., M. & T. R. R. Co., Appellees.

Under the Ordinance No. 6532, the commissioners of the consolidated debt delivered the books, papers, and cash, which was all the property they had, to the Board of Liquidation.

It is admitted that Mr. Harrison, chief clerk of the administrator of finance, will prove that the ground rents amounting to about $2,700 per annum, were collected by the city for thirty years, and no claim is made for that by the Board of Liquidation. These grounds rents are such as are described in the case of Klein against The City of New Orleans, Otto's Reports.

Also offers in evidence, Ordinance No. 7083, creating a committee on the city debt, May 17, 1881, as follows:

365 *Ordinance No.* 7083. *Administration Series.*

Whereas, it is essential to the substantial and permanent prosperity of this city that some arrangement should be effected with the public creditors which will place the city debt in a recognized and liquidated form, that the rate of taxation may be definitely known, and confidence established.

Whereas, There is just reason to believe, if in other respects, assurance of good faith is given that any settlements that may be effected will be strictly carried out [—] will make such reasonable concessions as the financial embarrassments of the city demand, and the people will be able and willing to bear.

Be it resolved, that a permanent committee, called the committee on "City Debt," be and the same is hereby created to be composed of three members of the council appointed by
366 the mayor who shall be himself *ex officio* a member thereof, whose special duty it shall be.

First. To ascertain, as accurately as possible, the total amount of the valid indebtedness of the city of New Orleans, principal

ıd interest, bonded and floating, including judgments, etc., with ull description of the nature of the debt, with rate of interest, if any, which it bears, etc.

Second. A statement of property or available assets of the municipal corporation.

Third. It shall be the duty and province of said committee to enter at once upon negotiations with the creditors of the city, with the view of ascertaining upon what terms of compromise the debt could be so adjusted as to relieve the community from the depression which the present state of uncertainty causes, and, at the same time, reduce the burden of actual liability which
367 weighs on our property and industries.

Fourth. That said committee report from time to time to this council, which, should any just and equitable plan of possible *of* execution be presented, will exert its influence for the passage of such legislation as may ultimately be necessary to give legal effect to any settlement which may be accepted.

Adopted by the city council of the city of New Orleans, May 17, 1881.

Also, defendants offer, act No. 68, of the Legislature of Louisiana, 1882:

An act entitled an act to authorize the city of New Orleans, through her proper authorities, to levy and collect, annually, commencing with, and in the year 1883, a tax not to exceed (5) five mills on all taxable property, in addition to the ten mill tax, authorized by the constitution of 1879, and the tax required by the Premium Bond Act, to pay the annual interest accruing
368 on all outstanding bonds of the city other than premium bonds, to provide for the use of the surplus proceeds of said tax as a sinking fund, to prescribe penalties for violation of this act, and for other purposes.

Whereas due notice, in accordance with the requirements of article 48 of the constitution of the State, of intention to apply for the passage of this act has been given and published thirty [days], and

Whereas, judgments have been, and are being, rendered against the city by both State and Federal courts, enforcing all existing contracts and obligations of the city, regardless of all legislation, constitutional or ordinary, restricting, limiting, or taking away the powers of taxation in existence when the contracts were created, which entails heavy expense, unsettles the values, and destroys private and public confidence, therefore—

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That the city of New Orleans, through her proper authorities, be, and she is hereby, authorized to levy and
369 collect, annually, commencing with the year 1883, a tax of (5) five mills on the assessed valuation of all property,

movable and immovable, within her limits, in addition to th fifteen mills which she is authorized to levy under existing laws? The proceeds of said tax, when collected, shall be turned over monthly to the "Board of Liquidation of the City Debt," to be applied as follows, to wit: First, to the payment of the annual interest on the bonds known as the consolidated bonds of the city of New Orleans, issued under acts No. 71 and 72 of the acts of the General Assembly of 1852, and said interest shall be paid at the time and in the manner as provided in said bonds and interest coupons attached thereto, the tax levied and collected in 1883 to be applied to the payment of the interest coupons maturing during that year, and so annually thereafter.

2d. To the payment, in the same manner and on the same conditions, of the interest on all other bonded obligations
370 outstanding not embraced in the foregoing and not funded into premium bonds.

SEC. 2. Be it further enacted, etc., That any surplus remaining out of the proceeds of this tax, after the payment of interest as aforesaid, shall be held as a sinking fund, and shall be applied to the extinction or retirement of any class or issue of bonds, or part due interest coupons on same, embraced in section first of this act, by purchase thereof from the lowest bidder: *Provided*,

1st. That bids being equal in amount, the preference shall be given to "consolidated bonds," and provided—

2d. That no bonds shall be redeemed at a higher price than par.

SEC. 3. Be it further enacted, etc., that on the first day of February, 1884, and annually thereafter, the Board of Liquidation, or the officer or officers who may then be charged with the execution of the provisions of this act shall publish a statement embracing—

1st. Amount of tax received under the levy and for the purpose described in this act.

371 2d. Amount paid out specifying in detail on what class or issue of such bonds, interest, and how much was paid.

3d. Amount of "surplus" on hand, and notice shall then and there be given, inviting bids for sale of bonds, or past due coupons, and day fixed when same shall be received and acted on, and such bids to the extent of funds on hand shall be accepted, and it shall be unlawful to reject same unless the price asked by the offerers exceeds par or exceeds the then prevailing market value of the bonds in question.

SEC. 4. Be it further enacted, etc., that at the first levy of the tax herein provided, the ordinance providing same shall contain a full and complete statement of the bonds for the payment of interest, on which provision is made by this act; and if any interest coupons provided for by this act are not presented for payment on or before the first day of April of the year immediately

succeeding that in which the tax was levied, the money to
372 the credit of such coupons not presented shall not thereafter be held to the credit of such coupons, but shall become part of the sinking fund hereinbefore provided and be applied at once to the retirement of bonds or past due coupons as herein provided, and without awaiting the time for the annual report provided in section three of this act.

SEC. 5. Be it further enacted, etc., that it shall be and is hereby made a misdemeanor on the part of any officer or officers, or persons having any functions to perform in connection with the execution of this act, whether as officers or employees, to divert, or misapply any of the proceeds of the tax herein authorized, or to fail or neglect to perform strictly all or any of the duties imposed by this act, and any officer or employee found guilty of violation of any of the provisions of this act, or of neglect to perform any positive duty enjoined thereby, shall, on conviction, be fined not less than five hundred dollars nor more than five thousand dollars, and suffer imprisonment at the discretion of the court.

373 SEC. 6. Be it further enacted, etc., That this act shall only take effect in case the settlement provided for and proposed in an act passed at the present session of the General Assembly, entitled, An act to authorize the city of New Orleans to renew and extend payment of her outstanding bonds other than premium bonds, to provide the rate of interest on the bonds as renewed or extended, and authorize the levy of a tax to pay, the same shall not be accepted by the holders of the bonds therein provided for, and the tax authorized by this act shall not be levied and collected if the tax authorized by the said act providing for the settlement of the debt shall be enforced, and in case said settlement shall be accepted by only a portion of the holders of said city bonds, then only a portion of the tax provided for in this act shall be levied, sufficiently in amount to meet the requirements of the other bonds, and only a portion of the tax provided for in said act for the settlement of the city debt, sufficient to meet the requirements of the bonds whose holders accept
374 said proposition, it being the intention that not more than five mills shall be levied under either or both acts for the benefit of the bonds of the city of New Orleans other than premium bonds.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) GEORGE L. WALTON,
President pro. tem. of the Senate.

Approved July 1st, 1882.

S. D. McENERY,
Governor of the State of Louisiana.

A true copy.
(Signed) WILL A. STRONG,
Secretary of State.

Defendants also offer in evidence the resolution adopted by the city council, August 1, 1882, as follows:

"That the mayor be requested to appoint a committee of three with the city attorney to confer with the managers of the Louisville and Nashville Railroad Company relative to a settlement with the city for the use of the levee property on which their tracks and depots are now situated."

375 Defendants also offer in evidence ordinance adopted by the city council on August 1st, 1882, No. 7978, administration series, as follows :

Official. From the Official Journal, No. 7978.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *August* 1, 1882.

Whereas the Louisville and Nashville Railroad Company being desirous of entering into a settlement for the use of the levee property on which their tracks and depots are now laid :

Therefore, be it resolved, That his honor, the mayor, be, and he is hereby, requested to appoint a committee of three, with the city attorney, to confer with the managers of the said Louisville and Nashville Railroad Company relative to a settlement with the city for the use of the property hereinbefore mentioned. Adopted by the council of the city of New Orleans, August 1, 1882.

Also, offers the opinion of the city attorney of New Orleans relative to said compromise.

The Compromise.

Statement of City Attorney, Chas. F. Buck.

376 The compromise lately effected with the Louisville and Nashville Railroad Company has been so violently and unqualifiedly assailed by the press of this city that I deem it proper, in my behalf, as well as in behalf of the city council, to lay before the public a full statement and history of the litigation, showing the premises on which we acted.

The city of New Orleans has agreed to dismiss the appeal under the compromise with the New Orleans, Mobile and Texas Railroad Company, from the decision in the suit filed in the superior court for the parish of Orleans, on the 8th of July, 1874, render by the circuit court of the United States on the 11th of June, 1876. From the allegations in the petition it appears that the immediate provocation of the suit was an attempt *vi et armis* to demolish and destroy the fences, buildings, and other

roperty of the company; the allegation being that the city,
through its officers and agents, on the 9th of July, 1874,
377 had unlawfully and violently made attack upon the property
of the petitioner in the neighborhood of St. Joseph street,
within the space heretofore mentioned, and has begun with a force of 100 men to demolish and destroy the fences, buildings, and other property of the petitioner, etc., and is still continuing said unlawful and outrageous act of violence, and will continue, to the injury of the petitioner, unless restrained by injunction.

The company alleged, also, that their right to maintain said railway tracks and necessary buildings and appurtenances had been recognized by the honorable the supreme court of the State of Louisiana, in its provisions and decrees delivered on May 4, 1874, in the action wherein the New Orleans, Mobile and Chattanooga Railroad Company were plaintiffs, and the city of New Orleans defendant, by which opinions and decrees an injunction heretofore issued against the New Orleans, Mobile and Chattanooga Railroad Company was set aside, and the company
allowed to retain the leeve below Canal street and to
378 maintain its railways thereon absolutely, and to maintain
its railway buildings, etc., on the levee between Canal and Calliope streets, and to remain in peaceable use and enjoyment thereof, subject to certain rights of the city of New Orleans, to be judicially ascertained as by records in suits Nos. 3692 and 3701 of the supreme court, as will more fully appear. The city appeared and answered, denying that the decrees of the supreme court of the State had the effect attributed to them by the plaintiff, but, on the contrary, intended to give only the right of way to the company through certain public streets of the city of New Orleans, and averred on the contrary, that the judgment of the supreme court in suit 3701 was *res adjudicata* in favor of the city, and maintained her absolute right and unrestricted control to the property, real and personal, etc. She reconvened, praying that plaintiff's injunction be dismissed, and asked that her rights as
recognized in 3701 may be recognized here; if not, such
379 other orders, writ or writs, process or processes, as should
become necessary, be directed to issue for the purpose of placing this appearer in peaceable and absolute possession of all goods, properties, rights, credits, claims, privileges, franchises, and servitudes accorded to her by the supreme court of the State of Louisiana, in the manner and form and by the judgment aforesaid, and to maintain and keep this appearer in quiet and uninterrupted use and absolute possession and enjoyment thereof, free and clear of all hindrance and disturbance on the part of plaintiff or any party or parties whomsoever, etc.

On the petition of the railroad company the cause was transferred to the circuit court of the United States, and on June 17, 1878, decree was rendered to the following effect:

The court, on consideration of the premises, declares and decrees that the judgment rendered by the eighth district court for the parish of Orleans, in suit No. 19, of December, 1874, in which judgment was affirmed by the supreme
380 court on the 4th day of May, 1871, upon appeal made by defendant in this suit as *res adjudicata* between them. The subject-matter of the two suits being the same and the object identical, and the wrongs committed by the defendants, as shown by the testimony affects the property mentioned in the judgment which was rendered by the State tribunals. The court orders and decrees that the injunction granted in this suit by the superior district court, before its removal to this court, be perpetuated, and defendants be enjoined from obstructing, by their agents, servants and assigns, any occupation, use, and employment of that railroad, tracks, depots, and other appurtenances under their charter, which are in and along the streets, squares, and spaces specified in the grants of the General Assembly to the said corporation, and also in the order and decree of said supreme court in cause No. 3692, aforesaid, the transcript of which is on file, and that defendants pay the costs of this suit.

381 The merits of the controversy, if they embrace anything more than a mere question of preventing a forcible interference, which is very doubtful, involve a determination of the question as to what rights, if any, remain to the city under the decrees in suits Nos. 3701 and 3692 of the supreme court of the State. I will present full extracts from the pleadings and decrees that we may ascertain what was decided.

It appears that the only point in controversy so far as the pleadings and decree in suit No. 3701, are concerned, is the right of the New Orleans, Mobile, and Texas Railroad Company, to enjoin the city from selling to Charles Morgan or to the Morgan Railroad Company, some of the batture property embraced in the grant by the State to the Mobile and Chattanooga Railroad Company.

The decision therein was that the injunction which had been granted by the lower court be dissolved "without prejudice to the rights of the parties," to be established by ex-propria-
382 tion proceedings. In the opinion of the court stress is laid upon the fact that the question as now stated was the only one presented.

Mr. Justice Howe said:

"In our opinion the injunction improperly issued in this case, but as the city has made no claim against the plaintiffs our former decree was erroneous in granting the demand in reconvention and in prohibiting the plaintiffs from occupying the property in controversy.

Under the pleadings all we can do is to render judgment in favor of the city, dissolving the injunction and dismissing the

plaintiff's suit, leaving the parties to their rights under the laws relative to the expropriation of property.

Now to suit No. 19 of the late eighth district court and the pleadings therein, which became record number 3,662 of the Supreme Court, it is obvious from the pleadings and the history of this litigation that the parties considered the proceedings and decrees in suit 3701 as not settling any substantial issue
383 between them; and pending that suit, on April 5, 1870, the New Orleans, Mobile and Chattanooga Railroad Company filed this other suit, alleging her grants under the acts of the Legislature, also that the city of New Orleans and other parties combined to prevent them from laying their tracks and obtaining full possession and enjoyment of their rights.

That the grants of the Legislature to which the petitioners have reference are clear, direct, and certain in the declaration of your petitioner's rights and entitle them to the protection they ask for, and praying that the city of New Orleans be enjoined from making or suffering any obstruction to the laying of the tracks of your petitioner as authorized by the acts of the General Assembly and as laid down and described in the map on file with the mayor, etc. The suit 3701 of the supreme court was commenced by the petitioner in the fifth district court for the parish of Orleans on July 6th, 1869, wherein the New Orleans, Mo-
384 bile and Chattanooga Railroad Company alleged her several grants from the State. Those grants were complete, absolute, and perfect, but the city of New Orleans claimed that the State could not make the grant without compensation to the city, and pray finally that the city of New Orleans be cited to appear and show cause why the petitioner should not enclose and occupy the grants, etc., the use of which was granted them, and if such city should exhibit any rights that the Legislature had no power to grant, that then the court should proceed under the laws of expropriation applicable to the case, etc., and pray that the city of New Orleans be enjoined and instructed from bargaining, selling, breaking, or in any wise alienating or encumbering any property before described, until final order or decree of this court. The city of New Orleans, leaving out of consideration the technical pleas to the form and manner of the proceeding, went to trial on the "general issue," without setting up any speci-
385 fic defenses or reconventional demands, leaving to the supreme court, as already stated, nothing to decide except the question of the injunction restraining the city from selling or disposing of the property.

This suit was also complicated by an intervention filed by Charles Morgan, but which has no bearing on the point in consideration, and by consent of the parties the issues involved in the intervention were not passed upon by the supreme court. The judgment of the eighth district court, rendered on the 5th

of December, 1871, was in favor of the New Orleans, Mobile and Chattanooga Railroad Company, making the injunction prayed for perpetual, which injunction was reversed, as already stated, by the supreme court, in suit No. 3701.

This minute statement of the pleadings, judgments and decrees of suit No. 738, fifth district court, which became suit No. 4 of the eighth district court and 3701 of the supreme court, is necessary in order to understand the effect of the judgments and decrees in suit No. 19, of the eighth district court,
386 and No. 3692 of the supreme court, which were relied on to establish the plea of *res adjudicata* made by the company in the controversy about to be terminated.

The allegations of the petition made by the company in this suit have already been stated. The city, in her answer, which was filed on the 26th of July, 1870, puts at issue apparently every point in the controversy that could be raised; and, as if to supply the deficiencies in the pleadings in the original case, adds a plea in reconvention and raised an issue which seems to have presented for determination every possible question in dispute between the parties. It sets up the special dedication of the city's rights to the batture under contracts made on the 20th of September, 1820, and recites briefly the city's rights, title, and power over the ground, the use of which had been granted by the Legislature to the company, but especially sets up that the acts
387 of the Legislature, particularly referred to in plaintiffs' petition, and the enjoyment of the grounds and franchise therein pretended to be granted and conferred, will give plaintiff the ownership and control of certain property belonging to this respondent and others without compensation, and will moreover give to them the possession of a *locus publicus*, the use and enjoyment of which is in the public, composed almost entirely of the citizens of the United States, and will thereby and otherwise interfere with and encumber rights vested in, and contracts in favor of the said owners and the public, composed almost entirely of citizens of the United States as aforesaid; and for these and other reasons the several acts of the Legislature of the State of Louisiana aforesaid, and the pretended grants and privileges to the New Orleans, Mobile and Chattanooga Railroad Company, referred to in plaintiffs' petition, and by said plaintiffs relied on to maintain the present action, were made, passed
388 and given in violation of section 10, article 1 of the Constitution of the United States; section 1 of the fourteenth amendment of the United States; section 2 of article 6 of the constitution of Louisiana, adopted in 1812; article 109 of the constitution of said State, adopted in 1845; article 105 of the constitution of said State, adopted in 1852; article 109 of the constitution of said State, adopted in 1864; article 110 of the constitu-

ion of said State, adopted in 1868, and was therefore null and void, and of no effect. * * * * * * *

"If this appearer shows unto the court that the New Orleans, Mobile and Chattanooga Railroad Company, improperly, unlawfully, and in violation of the legal and equitable rights of this respondent, unless enjoined by the court, will take sole and absolute control and possession of all property, real estate, and grounds referred to in the petition, and will inclose and occupy a large portion of the same for his own exclusive use and purposes, all of which will more fully appear from the aver-
389 ments in plaintiff's petition contained, and from the evidence to be produced on the trial of this case.

Wherefore this respondent prays that plaintiff's petition and injunction be dismissed at his cost, and that upon the original action judgment may be rendered in favor of this respondent and against the said plaintiff; and this appearer, becoming plaintiff in reconvention, prays that the New Orleans, Mobile, and Chattanooga Railroad Company may be cited to appear and answer this demand in reconvention; that upon the allegations and averments hereinbefore set forth, judgment in reconvention may be rendered in favor of this appearer and against said company; that the said company may be required to remove any and every enclosure, track and obstruction of every kind, name, and nature placed upon the property, grounds, or real estate referred to in the petition, and adjudge and decree to the plaintiff in
390 reconvention the said property, ground, or real estate, in the same condition it had before being taken in the possession of or interfered with by the said company.

That the said company be perpetually enjoined and restrained from preventing or hindering in any way or manner the property, ground, or real estate, the title to which is in this respondent, from being used by this respondent as owner; and that the said company be further enjoined and restricted from preventing or hindering such portion of said property, ground, or real estate, as has been dedicated to the public use, from being owned and used by and for the benefit of the public at large as *locus publicus*, and for the use and purposes of the public business and rights; that this appearer recover of plaintiff all such damages as this respondent has sustained, with interest according to law; that in the event that final judgment be not entered restraining plaintiff, as hereinbefore prayed for, and judgment be rendered in
391 his favor, and maintain the said company in possession of the real estate and grounds referred to in the petition in whole or in part; and in that event only respondent prays for judgment for the full value of her property and rights appropriated by the New Orleans, Mobile and Chattanooga Railroad Company, with damages in accordance with law; that the appearer's rights against the surety on the injunction bond be re-

served; that respondent recover costs, and have general relief in the premises.

(Signed) GEO. S. LACEY,
City Attorney.

This is the issue on which judgment was rendered by the eighth district court, on the 14th of December, 1871, signed on the 19th, one week after the judgment in said No. 4, and which judgment was affirmed by the supreme court in suit No. 3662.

The judgment of the eighth district court is in these words:

In this case, for the reasons contained in the written
392 opinion of the court, this day filed, it is ordered by the court that the rule made on defendants to show cause why the decree drafted by counsel for plaintiff should not be entered as the final decree of this court, which said rule was continued indefinitely on the 12th of December, 1871, be now rescinded, and the following decree entered.

It is therefore ordered, adjudged, and decreed that there be judgment in favor of plaintiff, the New Orleans, Mobile and Chattanooga Railroad Company and against the city of New Orleans, George Pandelly, Chas. A. Whitney, A. S. Hutchinson, and the Pontchartrain Railroad Company, defendants; that the writs of injunction issue herein upon the original and supplemental petitions, obtained at the suit of the said plaintiff, be made perpetual, and that the city of New Orleans, George Pendelly, Chas. A. Whitney, A. S. Hutchinson, and the Pontchartrain Railroad Company, be enjoined, prohibited, and re-
393 trained from in any manner interfering with or obstructing the plaintiff in the construction or maintenance of his railroad upon and along the levee, streets, and batture described and designated in the acts of the General Assembly granting such rights and privileges to the said company, and by maps filed with the secretary of state and the mayor of the city of New Orleans." * * * * * * *

"It is further ordered, adjudged, and decreed that plaintiff's demand for damages, made in the original petition, be dismissed as in case of non-suit; and it is still further ordered, adjudged, and decreed that upon the answer, the demand in reconvention filed by the city of New Orleans, and upon the issue made therein, judgment against plaintiff in reconvention, the city of New Orleans, and in favor of defendant, to the said plea and demand, the New Orleans, Mobile and Chattanooga Railroad Company; that the several acts of the General Assembly granting to
394 the New Orleans, Mobile and Chattanooga Railroad Company the right to construct, maintain, and use tracks, depots, etc., along and upon the levee, streets, and batture in front of the city of New Orleans, are maintained as constitutional and valid, and that the city of New Orleans be adjudged to have

no right or title of property in or to any batture property lying in front of the Faubourg St. Mary, and said property, and especially those spaces of ground described in the grants of plaintiff on decree to be the property of plaintiff, whose destination can only be changed by legislative authority—a right that the city of New Orleans cannot alienate or encumber."

From this judgment the city of New Orleans took a suspensive appeal, and this judgment was affirmed.

The question now is not on the correctness of this judgment, only on what rights it determined.

It is true, the judgment had been reversed by a divided court, but a rehearing was granted, and the former decree was
395 annulled again by a divided court; Mr. Justices Wyly and Taliaferro adhering to their original opinions.

But the decree is absolute, it says:

"It is, therefore, ordered, adjudged, and decreed, that the judgment heretofore rendered by us be avoided, annulled, and set aside, and it is now ordered, adjudged and decreed, that the judgment of the district court be affirmed with costs."

To ascertain, therefore, what this decree of the supreme court settled, we must look to the decree which it affirms, and the pleadings in the cause.

It is true the reasons stated for this change of opinion seem unsatisfactory, but no lawyer will contend that the true reasons upon which the judgment is founded constitutes any part of the matter determined.

It is asserted by those who question the correctness of the city attorney's position in this matter, that the sole point de-
396 termined in the case was that the Legislature had the right to grant to the railroad the right of way through the streets in this city.

The answer is as stated, that though the reasons are unsatisfactory, the pleadings and the decree determined what was passed upon by the court, and that all the rights claimed by the company under the grants were understood by the court to be settled by this decision becomes obvious from the reasons expressed by Justice Wyly in his dissenting opinion. He said:

The state can grant the right of way to a railroad company, but the company can only get the land necessary for tracks and depots by expropriation of purchase.

I had occasion to express my views on the main question involved in the case in the opinion of this court delivered on the 14th of May, 1873.

Is it not clear from this that Mr. Justice Wyly did not
397 dissent from a decision merely according the right of way, but he dissented from a decision which accorded to the company the use of land necessary for tracks and depots, as per

the grants set up by them? If nothing but the right of way was in controversy, what possibly could have [been] in his mind when he said he had expressed his opinion on the main question involved in this case, in the opinion delivered on the 14th of May, 1873?

What was the main controversy? No one disputes the right of the Legislature to grant rights of way, such a dispute would be childish and puerile.

The question was the right of the company to use the city's batture property under a grant from the Legislature, and that the court, in the reasons for the final decree, stated it as involving the right of way.

That statement can be easily harmonized with the other issues in the case.

It is a manifest fact that the expression is equivalent to
398 one that the State has power to grant the railroad company right of way through any streets or public places within the limits of the municipal corporation. Counsel for the city in their answer and in their briefs acknowledge that the batture in front of the city of New Orleans was *locus publicus*—public property. The question was, as stated in the dissenting opinion of Justice Ludeling."

"The question involved in this case is simply whether or not the Legislature can control squares and levees of the city of New Orleans without her consent," and to show this he quotes from the brief of the counsel for the city.

If the court understood that the only point in controversy was the power to grant the use of "streets," it should and would have reversed and amended the judgment of the lower court, but it affirmed it.

If the judgment, under the circumstances, went beyond the pleadings even some question might be raised as to its
399 scope and effect.

But it is strictly responsive to the pleadings and within the subject-matter of controversy as presented by the parties themselves.

Thus we have two suits, each ending in a decree of the supreme court of the State. One, the suit No. 738, fifth district court of New Orleans, filed July 6, 1869, transferred [to] eighth district court, becoming No. 4 of the docket thereof, and No. 3701 of the docket of the Supreme Court; the other, the suit No. 19, eighth district court, filed on the 5th of April, 1870, which went to the supreme court under the No. 3692.

The issues in both cases are identical as far as they go, but the first suit presented only a partial consideration of the subject, while in the second, under the answer made by the city hereinbefore recited, every conceivable right or pretension of the city

was set up, including a demand for the value of the prop-
400 erty granted by the State.

In the first suit an injunction was refused as against the city; also, in terms, an injunction "inhibiting the plaintiffs from occupying the property in controversy."

Mr. Justice Howell says:

"But as the city has made no claim against the plaintiffs, our former decree was erroneous in granting a demand in reconvention, and inhibiting the plaintiffs from occupying the property in controversy.

Under the pleadings all we can do is to render judgment in favor of the city, dissolving the injunction and dismissing plaintiffs' suit, leaving the parties to their rights under the laws relative to the expropriation of property." If there is any just ground to rest a hope on that, the city had still some valuable interest reserved to her, it must be found in this reservation, and nowhere else. But for this reservation in the decree in suit 3701,
401 no lawyer, no tyro of the law, no man of ordinary intelligence who has the slightest conception of the force and dignity which the civil law, from principle and policy, accords to the judicial determination of questions presented by competent parties, as to such parties, would contend that the judgment of the eighth district court, herein above recited, affirmed by the supreme court, and by that affirmance made the decree of the supreme court in No. 3692, does not constitute a final and unassailable "*quietus*" to the railroad company of the grants made by acts of the Legislature, the validity and constitutionality of which were directly put at issues.

No lawyer need be told that the reason on which a judgment is founded do not impair or modify its effect in the slightest degree.

The court affirmed and adopted as its own a judgment general or comprehensive in its terms, passing on every
402 issue presented in the pleadings.

The summary manner in which the case is disposed of in the final decree also detracts neither from its merits or effect.

Four opinions (in the two cases) had been read, one each by Justices Howell and Wyly, and two dissenting opinions by Chief Justice Ludeling. An oral argument was had on the rehearing. As is manifest from the opinions, the whole discussion had turned on the character of the property granted and the respective rights and powers of the city and State over it.

The two adverse propositions had been discussed by counsel and by the judges in their opposing views, and nothing remained but to choose between them.

If the declaration of the court that the only question presented is "has the State the power to grant to a railroad company the right of way through the streets in this city" is to affect the decree

at all, let me ask in what manner? What then did the
403 court decide?

How much of the acts of the Legislature is valid, and how much is invalid? And why did the court affirm their validity *in toto* if any part is invalid? And what part of the decree of the lower court is allowed to remain, and what part is annulled?

If the court only intended to decide the proposition conveyed by the literal signification of the terms "through the streets of the city," there would have been no dissenting opinions. I have already quoted the language of Mr. Justice Wyly's dissenting opinion, which clearly shows that he construed the decision to have the effect of confirming the railroad company in the grants made by the State of lands, etc., necessary for the tracks and depots, "expropriation or purchase." Nor is the plea of the thing adjudged affected by the character or capacity of the judge
404 who decided the cause a judgment rendered by a Jeffreys is as effective as one rendered by a Marshall.

I will now return to the reservation of the "rights of the parties under the laws relative to the rights of expropriation, all that need be said about it is that it was wiped out of existence by the rendition of the decree in suit No. 3692.

The two decrees cannot stand together, and if they could, the "reservation is not a judgment, it determines nothing, it only preserves a right.

The subsequent decision in 3692 takes away that right, by declaring valid unconditionally the legislative grants.

There is another line of argument by which the correctness of this conclusion can be established.

It is this: Two suits are progressing contemporaneously between the same parties, involving similar issues differing in extent, the second and greater including the lesser.

In the second suit the defendant the city of New Orleans, instead of pleading *lis pendeus*, not only joins issue with
405 the plaintiff on the cause of action presented by him, but makes new and additional issues by a demand in reconvention, or which the plaintiff in turn joins issue. A record is thus made up, which, in addition to the new matter presented, embraces every point of controversy involved in the first suit, including a demand for value, the very thing reserved in the former decree.

In the first suit judgment of a purely negative character is rendered, but reserving a particular right of the defendant.

In the second and absolute affirmative judgment is rendered, but reserving a particular right of the defendant.

In the second an absolute affirmative judgment is rendered, not only inconsistent with the "reservation" in the former decree, but so opposed to it that the two judgments cannot stand

ıth each other. A grant which in the first judgment is declared subject to the obligation of expropriation, is in the second rendered on a specific issue, made by the defendant, declared to be absolute and unconditional, and so a demand for compensation rejected. A practical question suggests itself, which
406 those who are so ready to condemn, should somewhat consider, and it is this: If this right of compelling the railroad company by an "expropriation proceeding" to pay for the squares used for depots, etc., was reserved, and existed all this time, why was it not exercised.

It might have been asserted perhaps in the very suit which has just been settled. It was not. The same counsel who filed the city's answer in suit No. 19, (the second suit) filed the answer in this reinforced by the late W. W. King, Esq.

Nothing is said of the reserved right of expropriation in this answer. Eight years have elapsed since the decrees of the Supreme Court were rendered, and no steps are taken to exercise the alleged valuable right. A hundred men are sent to pull down the company's buildings, and she applies for an injunction to protect herself against a *vi et armis*, disturbance of her possession. The city's answer in the cause amounts to nothing
407 but a general denial. The plea that the judgment in 3701 is *res ad judicata* in her favor is entirely purposeless, because the controversy involves only the right of peaceable "possession," and in 3701 the supreme court expressly refrained "from inhibiting" plaintiff from occupying the property; but by reserving the expropriation proceedings rather implied the right to possession, subject to the obligation of expropriating. But this right is nowhere asserted, and I had to go beyond the record to learn of it.

It has been laid aside quietly for nine years, and now when for the first time during 12 years of fruitless litigation something is realized for the city, it rises to torment us.

One other consideration which influences me, as shown in the synopsis of pleadings above recited, the city in her answer in suit No. 19 and 3692, the last and "second" suit expressly pleaded that in so far as the acts of the Legislature purported to give away the use of the city's private property, they
408 violated section 10, article 1 of the Constitution of the United States.

On this allegation the city could have taken a writ of error to the Supreme Court of the United States direct on the issues made by her answer. I do not pretend that by not taking the appeal the city has lost any right otherwise existing, but at this late date, when the plea of *res adjudicata* is made, it would acquire force from the implied tacit acquiescence in a judgment from which an appeal might have been, but was not taken.

On the merits of the controversy, I believe that the acts of the

Legislature are valid and constitutional. They may have bee bought through the Legislature, they may be impolitic and a fraud on the rights of the people, but that has nothing to do with their validity.

The only question involved is the constitutional power."

The batture property of the city is "public by nature and by grant, and the State has always exerted control over it.

When the city sells any of this property in fee simple
409 she does so under express authority of the Legislature.

For the rest, I contend she has only an administrative control for the benefit of the public, held and exercised at the will of the State.

I make my assertions neither in arrogance nor dogmatism.

I may be wrong throughout. I believed and still believe that I am right. On that conviction I have acted. On that conviction, looking, it is true, mainly to the matters directly involved in the present case, I could say neither more nor less than that the city's chances for success were so very doubtful that I dared not take the responsibility of advising a refusal of the offer of a compromise at $40,000.

My object in laying before the public the premises on which I acted, is to satisfy them, if possible, that no rights which justly belonged to them has been given away for inadequate compensation.

(Signed) CHAS. F. BUCK.
City Attorney.

410 Mr. Miller, for complainant, objects to the introduction of the opinion for any purpose except to prove *rem ipsam.*

Defendants also offer in evidence to show the continued exercise of power by the city of New Orleans over the matters contained in the ordinances Nos. 8061, 8088, No. 8127, November 10th, 1882, to the New Orleans, St. Louis, and Chicago railroad.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *September 26th*, 1880.

No. 8061. Administration Series.

An ordinance to authorize the administrator of accounts to advertise for sealed proposals for the purchase or exchange of water-works stock, as authorized by section 14, act No. 33, acts of 1877, extra session.

Whereas the city of New Orleans is owner in full possession and control of one thousand shares of stock in the New Orleans Water Works Company; and,

411 Whereas section 14 of act No. 33, of the extra session of 1877 provides that the city of New Orleans, through its council, shall have authority to apply the stock subscribed for by

said city, (in the New Orleans Water Works Company,) as herein provided, to the reduction of the bonded or floating debt of the said city, on such terms of adjustment as may be mutually agreed upon between the city council and the holders of such bonded or floating debt, provided that said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals after not less than fifteen days advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the council reserving the right to reject any and all bids; and,

Whereas, under existing laws, ample provision has been made for the settlement of the bonded debt of the city of New Orleans; therefore—

412 Be it ordained, for the purpose of reducing the floating debt of the city in accordance with the section of act, No. 33, above cited, that the administrator of accounts be, and he is hereby, authorized (to advertise) for sealed proposals to be made by holders of evidences of floating debt, receivable under said act, to wit:

Certificates of appropriation.

Certificates for five-eighths tax excess.

Tax warrants.

Unpaid ordinances for years 1873, 1874, 1875, 1876, and 1877.

Registered judgments founded on obligations other than bonded debt, and maturing before January 1, 1878.

Criminal, jury, and coroner's warrants.

Certified debt of the city of Carrollton.

The bids shall state the highest price of stock not less than par, payable in floating debt herein described, and the right to reject any (and) all bids is hereby reserved.

413 SECTION 2. Be it ordained, That Ordinance No. 4459, A. S., in so far as it may conflict with the foregoing, be, and the same is hereby, repealed.

Adopted by the council of the city of New Orleans, September 26, 1882.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealy, Walshe.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

A true copy.

(Signed) M. McNAMARA,
Secretary.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *October* 12, 1882.

No. 8088. *Administration Series.*

An ordinance providing certain wharf facilities for the use of [the] following lines of steamships, thirteen in number.

Leyland line of steamships, twenty-three in number and the Watleris line of German barks, forty-three in number, of which Louis Ranger & Co. of this city are agents.

414 SECTION 1. That all that portion of the river front commencing at the lower line of the privilege granted to the French commercial line of steamships, as per ordinance 7998, and extending down stream four hundred feet, be, and the same is hereby, set apart during a term of ten years from the passage of this ordinance, for the use of Serra line of steamships, the Leyland line of British steamers, and the Watjeris line of German barks, of which Louis Ranger & Co., of this city, are agents; but this is not to be construed as an exclusive privilege to the said Louis Ranger & Co., agents as aforesaid, except that they shall have preference in the use of said wharf or landing whenever they have a steamer in port or immediately due to occupy the same.

SEC. 2. That the said Louis Ranger & Co., agents as aforesaid, shall raise the above-mentioned levee or landing to such height and grade as may be determined on by and according to lines and levels to be furnished by the city surveyor, and cover
415 such levee or landing and all approaches leading thereto, from the present line of the Belt railroad track to the line of said wharf, from the upper to the lower lines of this privilege, with a sufficient thickness of hard substances, such as rock, oyster shell, gravel, or cinders, and shall at all times keep the same in good order and condition.

SEC. 3. That in case their vessels should be withdrawn from this port, or the above line should be dissolved or change hands, then this ordinance shall become null and void.

Adopted by the council of the city of New Orleans October 11th, 1882.

Yeas—Delamore, Fagan, Fitzpatrick, Huger, Mealy, Walshe.

Absent—Guillotte.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

A true copy.

(Signed) M. McNAMARA,
Secretary.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *November 10th*, 1882.

(*No.* 8127. *Administration Series.*)

416 An ordinance to grant to the Chicago, St. Louis and New Orleans Railroad Company certain rights and privileges for the construction or extension and for the maintenance and use of railroads and depots within the city of New Orleans.

Be it ordained, That the city of New Orleans hereby grants to

the Chicago, St. Louis and New Orleans Railroad Company and its successors, assigns, and lessees, the right and privilege to maintain and use, and to operate with steam or other motive power, the railroad as now laid and constructed, together with all necessary or convenient turnouts, switches, sidings, and turn-tables, to and from a point on its main track beyond Claiborne street, through Euphrosine street, across Rampart street, and along the Neutral ground on Triton Walk or Delord street to St. Joseph street, thence up the centre of St. Joseph street to Front street, thence up Front street to its junction with Water
417 street, and there to connect with the Belt railroad, the construction of any extension and turnouts to be according to lines and levels to be furnished by the city surveyor.

Be it further ordained, that the fuel used upon the engines for making steam shall be anthracite coal, or fuel not making more smoke than such coal.

Be it further ordained, That in the maintenance and operation of the said lines of railroad, and of the tracks, switches, sidings, and turn-tables thereof, the said railroad company shall not, in any manner, obstruct or impair the drainage of the streets along, upon, or across which they may be located; and whenever the company shall find it necessary to cover the channel of any drain, the sides thereof shall be first protected with brick, stone, or wood, in a good and substantial manner, and to the entire satisfaction of the city surveyor, and said covered channel
418 shall be kept open and clear for the passage of water by by said company.

Be it further ordained, That the said railroad company shall be bound to pave with material corresponding with existing pavements or such pavements as may hereafter be laid the space within the rails of the track, and as much on each side of the track through the streets now paved as may be necessary to put them in as good condition as they were before the pavement was taken up by the railroad company. After being duly notified by the street commissioner, refuse or neglect so to keep the streets through which said road shall pass in good order, it shall be the duty of the street commissioner to cause the said repairs to be made at the expense of said railroad company.

Be it further ordained, That the said railroad company shall have the right to construct and thereafter use and maintain for the safe and convenient transaction of its business such
419 depots as it may deem necessary, provided that said depots be located on property to be first legally acquired by said company.

Be it further ordained, That the said Chicago, St. Louis and New Orleans Railroad Company may use and operate the aforesaid lines of railroads within the city of New Orleans with steam or other motive power appropriate or usual in railroad transpor-

tation, but shall not run their trains at a greater speed than six miles per hour.

Be it further ordained, That in the construction, under this ordinance, of any extension of track or any turn-outs or switches, the construction shall be so made as in the least manner to obstruct the free passage of vehicles.

Be it further ordained, That the said railroad company shall be subjected to all general rules and regulations already in existence or which may hereafter be enacted by the common council.

Be it further ordained, That should the said railroad
420 company fail to maintain and have a regular communication and means of traffic on said lines of road, then the rights and privileges which are hereby granted to said company shall be forfeited and revert to the city of New Orleans.

And, provided further, that nothing contained in the above resolutions or in the grant of rights and privileges to said company is intended or shall be construed as binding the city of New Orleans or making her liable in any way or responsible to the said railroad company or its assigns for any loss, damage, or injury which might arise to them or either of them, should the said company or its assigns be in any manner or way interfered with or deprived of any or all of said rights or privileges, by any means or for any cause or on any ground whatsoever, other than the act or doing of the legally constituted authorities of the city of New Orleans.

Adopted by the council of the city of New Orleans, November 9th, 1882.

421 Yeas—Delamore, Fagan Fitzpatrick, Guillotte, Huger, Mealy, Walshe.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

A true copy.

(Signed) M. McNAMARA,
Secretary.

Defendants offer ordinance No. 7282, Aug. 18, 1881, to the New Orleans, Mobile, and Texas and the Louisville and Nashville railroad.

Ordinance No. 7483 to the Northeastern railroad, and ordinances 7484, 7973, 6015, and 6021.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *August 18th*, 1881.

No. 7282. Administration Series.

An ordinance granting and setting aside wharf room for New Orleans, Mobile, and Texas Railroad Company as reorganized.

SECTION 1. Be it ordained by the council of the city of New Orleans that all that portion of the wharves of the city

422 extending from the lower line of the C., St. L., and N. O. R. R. grant for wharves to the present wharf of the N. O., M. and T. R. R., as reorganized, is hereby set apart for the use of and as a landing place for steamboats, barges, steamships, sailing vessels, and other water craft, delivering cargoes to, or receiving cargoes from the N. O., M. and T. R. R. Company as reorganized: Provided, however, that it is not the intention of this ordinance to give to said railroad company the exclusive right to use said wharves, but only to give it such preference in the use thereof as will facilitate the transaction of the business consigned to and from said railroad company.

SEC. 2. That said wharves hereby set aside shall continue subject to all the rules and regulations of the council pertaining to wharves, and that the harbor master or wharfinger shall not assign the use hereof to vessels other than those doing business with said railroad company, except when such assign-
423 ment shall not interfere with the delivery or receipt of cargoes to and from said railroad; and provided further, that any vessel or vessels occupying said wharves and not engaged in discharging cargoes to, or receiving cargoes from, said railroad company shall, at the request of said railroad company, be required to haul outside to admit any vessel to land at said wharf to discharge or receive cargoes to or from said railroad company.

SEC. 3. That permission is hereby granted to the said New Orleans, Mobile, and Texas Railroad Company, as reorganized, to renew the wharves herein set aside for its use, and from time to time to fill up said wharf for such distance as will leave at least sixty feet of wharf superstructure, and so construct such improvements, betterments, and repairs upon and to the same as may be necessary to render and keep them in all respects suitable and proper for the transaction of the business of said railroad company, provided that a plan of such
424 renewals, improvements, and repairs shall be first approved by the city council, the cost of such renewal, improvement and repairs to the extent that said cost may represent the cost of renewing, improving, and repairing the said wharves, according to specifications on file in the city surveyor's office, shall be reimbursed to the said railroad company out of the revenues derived from the wharves herein designated, by such party or parties as may be authorized to collect such revenues, provided that no vessel or water-crafts shall use this landing to receive or discharge cargoes without paying the usual wharf dues; and that the payments so to be made to said railroad company in reimbursement by the lessees, or such persons as the city may authorize to collect the wharfage, shall only be required to be made at the end of each three months, and shall embrace the entire revenue collected from, said wharves until the full

425 amount shall have been refunded to the said railroad company.

It is also understood that nothing in this ordinance shall be construed to grant to the said railroad company the right to collect the revenue of said wharves, unless authorized by said city to do so, or to interfere with the right of the city to collect the same in such manner as the said city may elect.

SEC. 4. That the said New Orleans, Mobile and Texas Railroad Company, as reorganized, is hereby authorized to construct and maintain such track or tracks to, along, or upon, the said wharves and landings as may be necessary for the convenient and expeditious transaction of the business of said railroad company, provided that any track laid upon said wharves shall be laid flush with the planking, so as to offer no impediment in crossing over said tracks; and the said railroad company may erect a shed or sheds over so much of said wharves or *so* [such] portions
426 filled in hereby set apart for them, as may be necessary to protect fruit, coffee, provisions, cotton, and other merchandise liable to damage by exposure to the weather.

SEC. 5. The said railroad company shall have the right to remove from the said wharf or landing, at the expiration of this grant, any shed or buildings they may have erected thereon with the consent of the city counsel, unless the said city or wharf lessees shall elect to pay for and retain the same upon said wharves or landing at the then valuation of such sheds or buildings, to be determined by appraisement if the parties hereunto cannot agree.

SEC. 6. Said wharves shall be known as the wharves of the New Orleans, Mobile and Texas Railroad Company, as reorganized, and during the continuance of this assignment of said wharves and landings to the New Orleans, Mobile and Texas railroad as reorganized.

SEC. 7. That the Louisville and Nashville railroad shall
427 keep Calliope street from the centre of Water street to the wharf, and the entire front or levee room granted to them, in good order and condition, except such portion or portions of the same as may hereafter be occupied or used by the Chicago, St. Louis and New Orleans Railroad Company, which will be required to be kept in like good order and condition by the said Chicago, St. Louis and New Orleans Railroad Company.

The said Louisville and Nashville Railroad Company shall also cover the said front or levee room with such hard substances as may be designated by the city surveyor, similar to that used in covering other portions of the levee.

They are also hereby required to take up the woodwork of their old track on the "Cotton levee" between Canal and Girod streets, and fill the same with shell, gravel, or ballast, and shall

so be required to fill up the batture at the "Barge Landing" to the grade of their track.

428 SEC. 8. That it is further understood that nothing herein contained shall affect the right of the Chicago, St. Louis and New Orleans Railroad Company to lay their tracks upon the wharf, as per plans and specifications adopted by the city council.

SEC. 9. That this ordinance shall be in full force and effect from and after its promulgation, and be and remain in force for a term of ten years.

Adopted by the council of the city of New Orleans, August 18th, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Huger, Mealy.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

A true copy.

(Signed) M. McNAMARA,
Secretary.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December* 12, 1881.

(No. 7483. Administration Series.)

An ordinance granting to the New Orleans and North
429 Eastern Railroad Company, or its assigns, the right to construct, maintain, and operate by steam, a railroad for transportation of passengers and freight from Pointe aux Herbes along the lake shore through Milneburg, to bayou St. St. John; and also to construct, maintain, a railroad by steam along the embankment on the canal, in People's avenue, to the intersection of the same with Florida walk; thence to continue said railroad to the terminus thereof on the bank of the Mississippi river and on the levee, and to occupy a portion of the river bank.

SECTION 1. Be it ordained by the council of the city of New Orleans, That the New Orleans and North Eastern Railroad Company and its assigns be, and the same are hereby, authorized and empowered to locate, construct, and maintain and operate,
430 certain railroads by steam power in the city of New Orleans, with all the necessary tracks, switches, turnouts, bridges, sidings, and structures of every kind, convenient, useful, and appurtenant to said railroads, on the following lines, lands, avenues, streets, etc., viz:

1. From Pointe aux Herbes on Lake Pontchartrain, commencing at the end of the bridge or trestle of said company, across said lake to the Bayou St. John, through the village of Milneburg along or upon or adjacent to the shore of Lake Pontchartrain as

most convenient to the said railroad, and the same from Pointe au Herbes to the intersection of the embankment on the canal of People's avenue and Lake Pontchartrain may be constructed on an earth embankment, trestles, or piles, as may be convenient, but from said People's Avenue to Bayou St. John it shall be constructed on an earth embankment elevated above high-water mark, according to the lines and levels to be furnished by the city surveyor, the said embankment to be completed within
431 twenty-four months from the passage of this ordinance and to be so kept at said height and in good order and repair by said company.

2. From the intersection of the embankment of the canal of the People's avenue and Lake Pontchartrain to the intersection of said People's avenue canal embankment with Florida walk, which said embankment shall be elevated above high water mark according to lines and levels to be furnished by the city surveyor, and to be so kept in good repair by said company at its expense, with the right to deepen said People's avenue canal, to obtain earth for the said elevation and repairs, and that the said company shall continue said embankment along Florida walk from the intersection of People's avenue to the fisherman's canal lower limits of the city of New Orleans in accordance with lines and levels to be furnished by the city surveyor.

3. From the intersection of People's avenue canal embank-
432 ment with Florida walk to and from such point as may be selected for the river terminus of the said New Orleans and Northeastern railroad on the Mississippi river along *or* any two streets between Port and Clouet streets, inclusive, and the said company shall have the right, and is hereby authorized, to occupy with its railroads and to pass on and over Florida walk and any other avenue or street so as to connect the same from the intersection of said Florida walk and Peoples avenue with such streets as may be selected to pass from said Peoples' avenue to the Mississippi river, with the right to extend its tracks on the said river front from the lower limit of the city to the upper side of Port street to connect with the Belt Railroad, provided the said company shall keep all streets and avenues it may occupy with its railroads in the like good order as when entered
433 upon, and make and keep in repair all necessary culverts for the passage of all rain and surface water.

4. From the intersection of Peoples' Avenue with Florida Walk to the Pontchartrain Railroad and on the embankment of Marigny Canal and along the same to Bayou St. John, provided that said company shall have, and is hereby granted, the right to deepen Peoples' avenue canal and Marigny canal for the purpose of obtaining dirt to raise the embankment thereon, to elevate and maintain the same above high-water mark and overflow.

5. From the intersection of Canal, Carondelet and Claiborne

reets to Clara and such other streets on which the New Orleans
aslight Company has its coal and coke sheds: Provided, no
rain shall pass over said road, except between the hours of eleven
o'clock p. m. and four o'clock a. m. Said track to be laid accord-
ing to lines and levels furnished by the city surveyor.

6. From Elysian Field street on and along St. Claude
434 street, formerly Good Childrens' street, and the continua-
tion thereof to the lower limit of the city of New Orleans.

7. From such point on the embankment of the canal on Peoples' avenue as may be found most convenient in a direct line to the intersection of St. Bernard avenue and Claiborne street, and along said Claiborne street to Canal street, provided this does not interfere with grants made heretofore by the State of Louisiana or the city of New Orleans to other railroad companies.

SEC. 2. Be it further ordained, That the said New Orleans and Northeastern Railroad Company and its assigns shall have the right, and the same is hereby conferred, to occupy for its purposes and uses that portion of the levee, batture, and wharf in the city of New Orleans, beginning at Port street and a distance of one
thousand feet down the river to Montegut street, and to
435 erect and maintain thereon, at its own expense, such ferry
facilities, wharves, piles, machinery, elevators, yards, tracks, depots, stations, sheds, and other structures as shall be necesssary and convenient for the transaction of its business.

Provided said company shall keep said whaves in repair and construct the same to the satisfaction of the city surveyor. Provided, further, that the said company shall replace the wharves constructed by the city and occupied by said company at such point as may be designated by the administrators of commerce and improvements and city surveyor; and shall pave Levee street with square granite blocks from the extremity of the paving on that street, or from Louisa street to Poland street; and the city of New Orleans shall be entitled to remove all the cobble stones now on said street, and the said company shall commence the con-
struction of the embankment on Florida walk, from Peoples'
436 avenue to the Fisherman's canal, (lower city limits,)
within one year from the completion of the railroad to the river bank, and finish the same within two years from the said commencement, and that the square block pavement on Levee street shall be commenced immediately after the said company obtains possession of the one thousand feet of river bank and levee conceded and allowed to them by this ordinance, and continue and finish the same within one year.

No vessel shall occupy or lay at such wharves, discharge or receive cargo thereat, without the consent of said company or its successors or assigns; and all vessels lying at or using said wharves by consent of the company and on the business of said company shall be exempt from the payment of wharf dues or levee dues to

the city of New Orleans; said wharves and other structure shall be lighted and policed by the said company at its own expense.

437 Any vessel lying at said wharves with the consent of said company, but not on its business—not for the purpose of receiving or discharging freight or passengers to or from said company as a carrier—shall pay usual wharfage dues to the city. Provided, that no privilege or grant concerning or referring to the wharves and levees herein granted shall go into effect until the consent and permission of the wharf lessees be had and obtained during the continuance of their lease.

SEC. 3. Be it further ordained, That the said company shall have the right to lay double tracks from Point aux Herbes to Bayou St. John on People's avenue, on Florida Walk, Marigny avenue, Canal embankment, and St. Claude street.

SEC. 4. Be it further ordained That all rights and privileges granted by this ordinance are upon the express condition that in the transportation of freight over the New Orleans and

438 Northeastern railroad there shall be no unjust discrimination in the rate of charges to New Orleans; but it is not intended by this section to deprive said company of the right to charge the same rate per ton per mile on freight that may be charged on any other railroad running into the city of New Orleans, and also on the express condition that all the obligations imposed by this ordinance on the said company shall be——

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December* 12, 1881

No. 7484. *Administration Series.*

Be it ordained, That the right of way and privilege of constructing a double-track railroad, for thirty years from date of its adjudication, for the transportation of passengers and freight, for hire in accordance with specifications herewith furnished and kept on file in the office of the city surveyor of the city of

439 New Orleans, shall be sold at public auction by an auctioneer, to be selected by the mayor, to the highest bidder for cash, after ten days public advertisement and notice thereof, through the following streets, beginning at the boundary line of the parish of Jefferson, right bank, and the parish of Orleans, with a double-track railway, through Madison street to Powder Magazine street, through Powder Magazine street to Peter street, through Peter street to Bonny street, through Bonny street to Villere street, through Villere and Patterson streets to Atlantic avenue, through Patterson street and the public road along the Mississippi river to London street to Tunisburg; all in the fifth district of the city of New Orleans; said railroad to be operated by steam or other motive power.

The franchise of the said railroad to be sold by the city of New Orleans for its benefit and account.

440 Be it further ordained, That the construction of said railroad shall be commenced within ninety days from the adjudication hereinbefore mentioned, and completed within two years after such adjudication; and if said road be not so commenced and completed, then such right of construction shall lapse, and be forfeited by such adjudications.

Be it further ordained, That the administrator of commerce be, and is hereby, authorized to advertise for ten days, in the official journal of the city, the sale at public auction of the rights of way, privilege, etc., as specified in the foregoing sections of this ordinance.

Adopted by the council of the city of New Orleans, December 6th, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealy, Walshe.

(Signed) JOS. A. SHAKSPEARE,
Mayor.

A true copy.
W. JOHN McCALL,
Asst. Secretary.

Defendants also offer in evidence the deposition of E. A. Deslonde, as follows:

EXHIBIT 3.

441 Edmund A. Deslonde, being sworn, says that he is fifty-four years of age, and has resided in New Orleans some thirty years, more or less, continuously since the year 1865; is a native of Louisiana, and has been engaged in the real estate business, selling and purchasing property; has often acted as an appraiser or expert of real estate under appointment of courts. Furthermore, he states that he is familiar with all the property in New Orleans known and designated as "batture property and lots;" that he has examined the several squares described and marked on the map No. 144, made part of this record, being squares "A" and "B," situated between Canal and Poydras streets, also square 27 "A" or "C," and fractional square "D," and square E, with fractional square "F."

Whatever speculative value may be at present attached to squares "A" and "B" by reason of contiguous improvements and the extension of development of railroads along and over the batture and through the squares, some ten years or so ago they would barely have realized, if then sold, more than
442 eight or ten thousand dollars, as illustrated by the sale of the fractional square on which the Crescent City Railroad

Company have recently erected their Canal street depot, diagonally opposite said square "A" and "B."

The sale referred to was effected at public auction some ten years ago or thereabout, and the square with tenantable buildings thereon sold for less than eight thousand dollars.

The other squares on the map, viz., 27 "A," with portion of square "D" and square "E," with portion of "F," derive their value not from any superior commercial or industrial advantages, which they offer, but simply and merely from the presence of railroad lines, and their extension within the past few years, say six or seven years, and from a demand, especially within the past two years, resulting from a desire of the several trunk lines to effect close connection in that locality.

Apart and aside from this accidental and artificial
443 cause, these squares would have no more value than other property within a radius of two or three squares.

If subdivided into 30-feet lots, which is the usual measurement of lots in this city, these four squares would give about 32 lots, whose intrinsic value, apart from that imparted by the railroad enterprise, would be one thousand dollars per lot, say $32,000 for the four squares; and, without the railroad competition now existing, I do not believe they would sell for a higher price at the present time.

(Signed) E. S. DESLONDE.

Sworn to before me, on this 9th day of November, 1882.

(Signed) WILLIAM L. POOLE
Notary Public.

Testimony of James T. Harrahan.

EXHIBIT 4.

James T. Harrahan, being examined, says that he is manager of the N. O., M. and T. and I. I., and Louisville and Nashville division between New Orleans and Mobile; that the square
27 A, as described on map No. 2, made by J. A. D. Hemecourt, city surveyor, in record No. 144, now No. 17 of the
444 Supreme Court of the United States, is the only square within the grants of use or occupation made by the Legislature of Louisiana upon which there are any buildings; upon this square there is a depot constructed of brick by the railroad company, which cost the company about twenty-five thousand dollars. The portion of ground in front of square marked D on said map is an open space used for general purposes of commerce, as is also the portion of ground marked E.

There are some railroad tracks and switches upon said portion of ground. The ties are laid even with the surface of the ground, and the iron a little above, and do materially interfere with the

same for general purposes of commerce, except when cars are moving upon them.

The portions of ground marked 26 AJ and 25 AI, the first, between Julia and what would be Notre Dame, if extended through *and* the water, and the second, between Julia, St.
445 Joseph, Water, and Pilie streets, belong to the railroad company, as also that marked H, and the ground between Water, Calliope, St. Joseph, and the river.

The portions of ground marked on said map 15*a*, 14*a*, 13B, and 12*a* are open to commerce and used for its general purposes, and have been so used since the formation of the same as batture front upon the portions of ground, and upon the street of what would be Water street, if extended beyond Girod street, there are several railroad tracks.

First, that of Morgan's Lousiana and Texas Railroad Company; next, those of the New Orleans, Mobile and Texas Railroad Company, or the Louisville and Nashville Railroad Company, as the same is now called. All of these tracks are laid smooth with the surface of the ground, and do not interfere with the general public use for commerce. The passenger depot of the New Orleans, Mobile and Texas Railroad Company is upon a space of ground on the levee below Canal street, between Custom-house and Canal street and what would be
446 Delta, if prolonged, and the river. It was constructed under an ordinance of the city of New Orleans, No. ——, Administration "Series," ——, 1881, the wharf below going to the New Orleans, Mobile and Texas R. R. Co., or Louisville and Nashville R. R. Co.—runs about three hundred and fifty-five feet from Calliope street towards Julia street, described in act No. ——, of the Louisiana Legislature, and part of said wharf extends above Calliope street toward —— street.

This is occupied under an ordinance of the city of New Orleans.

There are a large number of grants made by the city of New Orleans to the New Orleans, Mobile, and Texas Railroad Company for the location of their tracks or their change of position on the levee, which I understand have been offered in evidence.

(Signed) J. T. HARAHAN.

H. C. M.

JUNE 17, 1869.

447 An ordinance in relation to "the New Orleans, Mobile, and Chattanooga Railroad Company," a corporation of the State of Alabama.

Whereas by the terms and provisions of the ordinances which have been heretofore adopted by the city of New Orleans, in relation to the New Orleans, Mobile, and Chattanooga Railroad

Company, certain rights and privileges were granted to, and certain agreements made with, the said company, conditioned that its line of railroad between the cities of New Orleans and Mobile should be completed prior to the twenty-fourth day of November, 1869; and,

Whereas that one of the said agreements on the part of the city of New Orleans is that the city will cause to be opened, for public use, an extension of Claiborne street, from St. Bernard avenue to Lafayette avenue, in the line of and in the same manner as that part of Claiborne street between St. Bernard avenue and Canal street, and that said company may occupy the
448 central portion of the neutral ground in such extension for the tracks of their railroad;

Whereas that, although one of the ordinances relating to said company was adopted February 16th, 1867, and the other, in which the agreement relating to the extension of Claiborne street was made, was adopted November 14, 1867, it was impossible for the said company to obtain from the State of Louisiana any charter or grant whatever for the construction of the railroad within the limits of the State of Louisiana until the 19th day of August, 1868, when the necessary grant was given to it by an act of the General Assembly;

And whereas the said company have already made all requisite preparation and provision for the immediate construction of its railroad between the cities of New Orleans and Mobile, and have already placed under contract the construction of all the bridges and all of the grading therefor, (except the grading to be done by dredges near the Rigolets,) all of which work is by the
449 terms of the contracts to be completed ready for the track to be laid prior to dates varying from June 1st to November 1st, 1869;

And whereas the said company will consent to require that the city shall at present open and grade for their immediate use only so much of the neutral ground of said extension of Claiborne street as will be sufficient for the laying of the tracks of its railroad from Elysian Fields street to Lafayette avenue, and will further consent that it will not require the city to open and grade the remainder of said extension of Claiborne street in accordance with the agreement contained in the ordinance above referred to until after the line of its railroad shall have been built between the cities of New Orleans and Mobile;

And whereas the cost to the city for the purchase of all property required for the opening of that part of said extension of Claiborne street from Elysian Fields street to Lafayette
450 avenue is estimated to be only about nine or ten thousand;

And whereas the grading of so much of the neutral gronud in that part of said extension as is required for the immediate

use of the said company is estimated to cost only about twenty-five thousand dollars;

And whereas the said portion of the neutral ground in said extension of Claiborne street, from Elysian Fields street to Lafayette avenue, will be required by said company for the laying of its tracks of its railroad in July or August of the present year;

And whereas the great delay in the commencement of the road, occasioned by the impossibility of obtaining the requisite franchise therefor from the State of Louisiana, prior to August 19th, 1868, renders it impracticable for the company to complete its line of railroad to Mobile prior to November 24th, 1869, with necessarily increasing the cost of the work; therefore—

Be it ordained, that the time limited (*id est*, November
451 24, 1869,) for the completing of the railroad of the said, the New Orleans, Mobile and Chattanooga Railroad Company, between the city of New Orleans and the city of Mobile, in the ordinances which have been heretofore adopted by the city of New Orleans relating to the said company, be and the same is hereby extended for the term of one year, (*id est* until November 24, 1870,) from and after the expiration of the time limited in the said ordinances heretofore adopted: *Provided*, That the said company shall only require the city of New Orleans to open and grade such portion of the extension of Claiborne street from St. Bernard, Lafayette avenue, and is required for the laying of the tracks of its railroad from Elysian Fields street to Lafayette avenue, until after the lease of its railroad shall have been built between Elysian Fields street, in the city of New Orleans and Mobile.

Be it further ordained,

That immediately after the exceptions of this ordinance
452 by the said company, the city of New Orleans will proceed to open that part of the said extension of Claiborne street, between Elysian Fields street, and Lafayette avenue, and to grade so much of the central portion of the neutral ground thereof, as is required by the said company for the laying of the tracks of its railroads and will complete the same by August 1st, 1869, and after the said company shall have built its line of railroad from New Orleans to Mobile, as hereinbefore named, provided it to be built within the extension of time by this ordinance granted, and after the expiration of two years from and after the adoption of this ordinance, then the city of New Orleans will at the request of said company, further open and grade so much of the neutral ground of said extension of Claiborne street, as is required for the laying of the tracks of the railroad of said company, between Elysian Fields streets and St. Bernard avenue, and after the expiration of five years from and after the adoption of this ordinance
453 the city will, at the request of said company, complete the opening and grading of said extension of Claiborne street

from St. Bernard avenue to Lafayette avenue as provided for the ordinance approved November 14, 1867.

(Signed) ALFRED KEARNEY,
Assistant Alderman.

(Signed) THOMAS MARKEY,
President Board Aldermen.

Approved June 17, 1869.

(Signed) JOHN R. CONWAY,
Mayor.

NOTE.—This ordinance of the city of New Orleans was accepted by the company [June] 24th, 1869, by a resolution of its directors, and a copy of such resolution was sent to the mayor of said city, June 24th, 1869.

AUGUST 19, 1868.

An ordinance, in relation to "The New Orleans, Mobile, and Chattanooga Railroad Company," a corporation of the State of Alabama, and conferring upon the said company additional rights and privileges for the construction, use,
454 and maintenance of its railroads and depots within the corporate limits of the city of New Orleans.

Be it resolved, That the said The New Orleans, Mobile and Chattanooga Railroad Company, is hereby authorized and empowered to locate, construct, and maintain, and thereafter to manage and use, by running thereon its engines and cars, and trains of cars, a railroad with two tracks, and the necessary turn-outs, to and from its depots, along and upon the central portion of the neutral ground in the centre of Claiborne street, from the north-easterly side of Canal street to the line of Poydras street, thence by a curved line to Lafayette street, thence along and upon Lafayette street to Locust street, thence across the intervening streets and grounds lying between Lafayette and Perrilat, and Girod streets, to Rampart street. And the said company is hereby authorized and empowered to construct, manage, and use, by running thereon its freight cars, drawn by the
455 power of horses or mules, a railroad with one track upon and along Girod street, from Liberty street to the Mississippi river, with necessary turn-outs to and from a freight depot located on any grounds near the levee, which the said company may acquire for the purpose.

Provided further, That in the construction of such railroad in Girod street, and the turn-outs thereof, only such iron rails shall be used as shall least impede the traffic of the streets, and such as shall be approved by the city surveyor.

Be it further resolved, That the said The New Orleans, Mobile and Chattanooga Railroad Company, is hereby authorized and empow-

ered to locate, construct, and thereafter to maintain and use for the safe and convenient transaction of its business, a passenger depot, and a freight depot, as it may deem necessary for its purposes, upon the three blocks of ground bounded by Girod street, Liberty street, Lafayette street, and Rampart street, and to
456 close and occupy for such purpose that portion of Franklin street and that portion of Basin street lying between Girod street and Lafayette street, and the said company is hereby further authorized and empowered to enclose for its business and purposes the three blocks of ground bounded by Perrillat street, Locust street, Lafayette street, and Liberty street, and to close and occupy for its business and purposes that portion of Freret street and that portion of Howard Street lying between Perrillat street and Lafayette street, and that portion of Perrillat street lying between Liberty street and Locust street.

Be it further resolved, That the said, the New Orleans, Mobile and Chattanooga Railroad Company is hereby authorized and empowered in locating, constructing, and using their railroad eastward from Claiborne street, to construct across and cross all streams, bayous, and water channels within the corporate
457 limits of the city of New Orleans, with close or continuous bridges, and the said company shall not be required to erect and maintain draw bridges at any points except across Carondelet canal, as provided in ordinance No. 472 (new series), passed February 16, 1867.

Be it further resolved, That the city of New Orleans will, for the furtherance and promotion of the interests of said company, and to aid in the accomplishments of its purposes and objects, as well as for the advancement of the interests of the city at large, cause to be opened for the public use an extension of Claiborne street from St. Bernard avenue to Lafayette avenue, such extension to be made in a direct line with and of the width of that portion of Claiborne street, between St. Bernard avenue and Canal street, and the neutral ground in the centre of said extension to be laid out and planted with trees in the same manner as the neutral ground now is in that portion of Claiborne street before referred to, and the right of way for two tracks is hereby granted
458 to said company along and upon the neutral portion of said neutral ground in such extension, such right of way being upon the same line as heretofore granted to said company by the city.

Provided, however, That the said company shall, before constructing said lines of railroad and said depots, acquire the title to all private property to be occupied and used therefor, by purchase, or in such other manner as shall be in accordance with the laws of the State of Louisiana.

And provided further, That the said company shall, immediately after the construction of the tracks of its railroad and turn-

outs across any street, restore such street in such manner as that its usefulness shall not be impaired, nor the passage of traffic thereon be unnecessar[il]y impeded.

And provided further, That the trees now standing on the neutral ground, in Claiborne street, shall not be removed or injured by the said company in the construction of its tracks and
459 depots, excepting where they have to be removed for the turnouts to and from the depots:

And provided further, That in the construction of the said lines of railroad, and the tracks and turnouts thereof, the said company shall not in any manner obstruct or impair the drainage of the streets along, upon, and across which the said railroad is hereby located; and that the said company shall at all times, and in every respect, be bound to conform with the levels and grades to be established by the city surveyor of New Orleans; and whenever the company shall find it necessary to cover the channel of any drain, the sides thereof shall be first protected with brick or wood in a good and substantial manner, and such covered channel shall be kept in repair, open and clear for the passage of water by said company.

And provided further, That all of said depots shall be constructed in the most substantial and best workmanlike manner, with walls of brick, and roofs covered with slate and
460 metal, and they shall be designed and completed in such a manner as to make them in every respect first-class depot buildings.

And provided further, That the said company shall not at any time suffer, or permit its engines, cars, or trains of cars, to remain standing on any street crossings upon its said lines of road, or to obstruct crossings in any manner whatever, except so far as may be done by said trains in motion. The regulations of the company shall require that the bell of all trains in motion shall be constantly rung, and that no steam-whistle shall be sounded and that no train shall move at a greater rate of speed than than (5) five miles per hour while south of Elysian Fields street.

Be it further resolved that the said, the New Orleans, Mobile and Chattanooga Railroad Company is organized and empowered to assign the rights and privileges hereby granted to it to a company to be organized in its interest under the laws of Louisiana, and for the purpose of constructing that portion of
461 its road lying within the State of Louisiana, if such an assignment shall be found necessary and expedient to enable the company to construct its line of road and to complete the purposes of its corporation.

Provided, however, That if the said, the New Orleans, Mobile and Chattanooga Railroad Company shall not complete the line of road for traffic between this city and the city of Mobile, within the time designated in its charter, (*id est*, prior to the 24th day

of November, 1869,) or that it should fail from any fault of its own, either for the want of means or any other cause, to maintain and have a regular communication and means of traffic between the said cities, then the rights and privileges which are hereby granted to said company shall be forfeited and revert to the city of New Orleans.

And provided further, That nothing contained in the above resolutions or in the grant of right and privileges to the
462 said company is intended or shall be construed as binding the city of New Orleans, or making it in any way liable or responsible to the said, the New Orleans, Mobile and Chattanooga Railroad Company, or its assigns, for any loss, damage, or injury which might arise to them, or either of them, should the said company or its assigns be in any manner or way interfered with, or deprived of any or all of said rights or privileges by any means or for any cause, or on any ground whatsoever other than the act or doing of the legally constituted authorities of the city of New Orleans.

(Signed) C. S. SAUVINET,
President pro tem. Board of Ass't Aldermen.

(Signed) JAMES GRAHAM,
President Board of Aldermen.

Approved November 14, 1867.

(Signed) E. HEATH,
Mayor of the City of New Orleans.

Note: This ordinance of the city of New Orleans, was
463 accepted by the company, February 6, 1868, by a resolution of its directors, and a copy of such resolution was sent to the mayor of said city February 8, 1868.

The same rights and privileges which are granted to the company by this ordinance except the resolution of obligating the city to open the extension of Claiborne street for the benefit of the company, were subsequently granted to the company, without limitation, by the State of Louisiana by an act of the General Assembly approved August 19, 1868.

CITY OF NEW ORLEANS,
February 16th, 1867.

An Ordinance in relation to "the New Orleans, Mobile and Chattanooga Railroad Company," a corporation of the State of Alabama, and authorizing and empowering said compan
464 to construct, use, and maintain its railroads and depots within the corporate limits of the city of New Orleans.

Be it resolved, That to enable the said company to accomplish the purposes and objects of its incorporation, the furtherance and pursuit of which within the corporate limits of

this city is hereby granted, and the following-named rights and privileges are vested in and confirmed to the said company, which is hereby empowered and authorized—

First. To locate, construct, and maintain, and thereafter to manage and use, by running thereon, its engines and cars, a railroad with two tracks and the necessary turn-outs to and from its depots, from the northeastern side of Canal street, at its intersection with Claiborne street, thence northeasterly along and up on the neutral ground in the center of Claiborne street to and across the line of St. Bernard avenue, thence in a direct line with that portion of Claiborne street lying between Canal street
465 and the line of St. Bernard avenue across the intervening streets and blocks, to and across the line of Lafayette avenue, and thence in such direction as may be deemed most expedient by said company across the intervening streets and grounds, to the easterly or lower line of the limit of the city.

Provided, however, That the said company shall, before constructing said line of railroad, acquire the title to all private property to be occupied and used therefor, by purchase or in such manner as shall be in accordance with the laws of the State of Louisiana.

And further provided, That the company shall immediately after the construction of the tracks of its railroad and turn-outs across any street restore such street in such manner as that its usefulness shall not be impaired nor the passage of traffic thereon be impeded.

And further provided, That the trees now standing upon
466 the neutral ground in Claiborne street shall not be removed or injured by the said company in the construction of its tracks and depots, excepting where they have to be removed for the turn-outs to and from the depots.

And further provided, That the said company shall for its crossings of Carondelet canal construct and maintain a drawbridge, adapted and suitable for their own use, and the free use of the public and the passage of carriages and vehicles, and which, when open, shall give a clear space for the passage of vessels of not less than (50) fifty feet in width; and said company, after the construction of said drawbridge, shall at all times thereafter provide that said drawbridge shall be open for the passage of any and all vessels seeking to pass through the same, without unnecessary delay, and to keep the same always in repair and good order for the aforesaid use of the
467 public.

And provided further, That in the construction of the said line of railroad, and the tracks and turn-outs thereof, the said company shall not in any manner obstruct or impair the drainage of the streets along, upon, and across which the said railroad is hereby located, and that the said company shall at all

times and in every respect be bound to conform with the levels and grades to be established by the city surveyor of New Orleans. And whenever the company shall find it necessary to cover the channel of any drain, the sides thereof shall be first protected with brick or wood in a good and substantial manner, and such covered channel shall be kept in repair, open and clear for the passage of water by said company.

Second. To construct and thereafter to use and maintain
468 for the safe and convenient transaction of its business such depots as it may deem necessary for the purposes and objects of its incorporation.

Provided, That said depots be located on property to be first legally acquired by the said company as aforesaid and to be within the limits of the city comprised between Canal and Ursulines street, Villere and Galvez streets.

And provided further, That the said company shall in no manner or way use or interfere with any part or portion of the cemeteries within the incorporated limits of the city of New Orleans.

Provided further, That all of said depots shall be constructed in the most substantial and workmanlike manner, with walls of brick and roofs covered with slate or metal, and they shall be designed and completed in such a manner as to make them in every respect first class depot buildings.

469 And provided further, That the said company shall not at any time suffer or permit its engines, cars, or trains of cars to remain standing upon any street crossing upon its said line of roads or to obstruct crossings in any manner whatsoever, except so far as may be done by said trains in motion. The regulations of the company shall require that the bell of all trains in motion south of Elysian Fields street shall be constantly rung and that no steam-whistle shall be sounded while south of said street, and that no train while south of Elysian Fields street shall move at a greater rate of speed than (5) five miles an hour.

Third. The said, the New Orleans, Mobile and Chattanooga Railroad Company, is authorized and empowered to assign the rights and privileges hereby granted to it to a company to be organized in their interest under the laws of Louisiana for
470 the purpose of constructing that portion of their road lying within the State of Louisiana, if such an assignment shall be found necessary and expedient to enable the company to construct their line of road and to complete the purposes of its incorporation.

Provided, That if the said the New Orleans and Mobile and Chattanooga Railroad Company shall not complete the line of road for traffic between this city and the city of Mobile within the time designated in its charter (*id est* prior to the 24th day of November, 1869,) or that it should fail from any fault of its own,

either for the want of means or any other cause, to maintain and have a regular communication and means of traffic between the said cities, then the rights and privileges which are hereby granted to said company shall be forfeited and revert to the city of New Orleans.

471 Provided further, That nothing contained in the above resolutions or the proposed grant of rights and privileges to the said company, is intended or shall be construed as binding the city of New Orleans or making it in any way liable or responsible to the said, the New Orleans, Mobile and Chattanooga Railroad Company, or its assigns, for any loss, damage, or injury which might arise to them or either of them, should the said company or its assigns be in any manner or way interfered with, or deprived of any or all of said rights and privileges, by any means, or for any cause, or on any ground whatsoever, other than the act or doing of the legally constituted authorities of the city of New Orleans.

Provided further, That the depots of the said company shall be so constructed that there shall not be any doors opening on Canal street, for the entrance or exit of cars, locomotives,

472 drays, or carriages, or for receiving or delivering of freight.

(Signed) A. W. BOSWORTH,
President Board of Aldermen.

(Signed) WM. McCULLOUGH,
President Board of Assis't Aldermen.

Approved February 16, 1867.

(Signed) JOHN T. MONROE,
Mayor of the City of New Orleans.

Note.—This ordinance of the city of New Orleans was accepted by the company May 3d, 1867, by a resolution of its directors and a copy of such resolution was sent to the mayor of said city May the 8th, 1867. The same rights and privileges which are granted to the company by this ordinance were subsequently granted to the company without limitation by the State of Louisiana by an act of the General Assembly, approved August 19th, 1868.

State of Alabama. Charter of the company.

473 An act to incorporate the New Orleans, Mobile and Chattanoga Railroad Company.

SECTION I. Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened: That Oakes Ames, Peter Butler, William Sprague, James A. Raynor, William S. Williams, Chas. W. Durant, John M. Courteney, Charles Walsh, and William O. Hinston, and their asso-

ciates, be and they are hereby incorporated into and constituted a body politic and corporate under the name and style of the New Orleans, Mobile and Chattanooga Railroad Company, and by that name are hereby authorized to have and to hold real and personal property for the objects, purposes, and business of said corporation within this State, or within any other State, sovereignty, or government that may sanction, authorize, and permit the same to make contracts, to sue and be
474 sued, to make rules, regulations, by-laws, and ordinances for the management, direction, and control of said corporation not inconsistent with nor contrary to the laws of the State of Alabama and to the provisions and conditions stated and set forth in this act, and to have, enjoy, and exercise all the rights, powers, and privileges pertaining to corporate bodies, and necessary for the objects and purposes of this act, with the privilege and authority to exercise such corporate powers within the said State of Alabama, and also within any other State of the United States that shall recognize the existence of said corporation, and sanction, authorize, or permit the exercise of said corporate powers by said corporation within its limits.

SECTION II. Be it further enacted, That the general purposes and objects of this corporation, the present and furtherance of which are hereby granted, are hereby defined to be as follows:

First. To construct and build, and thereafter to own, maintain, manage, and use, a railroad upon such a course, and
475 upon such a route, and with such a track or tracks thereupon, as may be deemed by a majority of the directors of said corporation most proper and expedient, and best adapted to and for the public accommodation from some suitable point in the city of Mobile, towards and to any point on the line between the States of Alabama and Mississippi, in the county of Mobile.

Second. To construct and build, and thereafter to own and maintain, manage and use, a railroad in like manner in continuation, and as a part of the said railroad within the limits of the said State of Alabama, and from its termination within the said limits to the city of New Orleans, in the State of Louisiana, through the territory of the State of Mississippi and Louisiana; in such a course, however, and subject to such conditions and terms as may be hereafter imposed, and attended by such rights, privileges, and franchises as may be hereafter accorded and granted to the said corporation by the said States of Louisiana and Mississippi.

476 Third. To construct and build, and thereafter to own, maintain, manage, and use a railroad upon such a course and on such a route, and with such a track or tracks, as may be deemed by a majority of the directors of said corporation most proper and expedient and best adapted to, and for the public accommodation from some suitable point in the city of Mobile,

towards and to any point on the line between the State of Alabama and the State of Tennessee, or towards and to any point on the line between the State of Alabama and the State of Georgia.

Fourth. To construct and build, and thereafter to own, maintain, manage, and use, a railroad in like manner, in continuation and as a part of the said railroad, within the limits of the said State of Alabama, last above mentioned, and from its termination within said limits to Chattanooga, in the State of Tennessee, through the territory of the States of Georgia and Tennessee, or either of them, in such a course however, and subject to such conditions and terms as may be imposed by, and
477 attended by such rights, privileges, and franchises, as may be accorded and granted to the said State of Tennessee and Georgia, or either of them.

Fifth. To take, transport, carry and convey persons and property upon said railroads, or either of them, by power of steam or by any other power, and to receive for such transportation, carriage, and conveyance, such tolls and charges as shall be from time to time established, fixed, and regulated by the directors of the said corporation.

SEC. III. Be it further enacted, That the said corporation is hereby authorized to take and receive by grants, bequests, or gift, and to own and possess any real and personal estate, that may be granted, devised, or given to it by, or from any person, or persons, corporation or association, and to obtain by purchase, and to own and possess, any real and personal estate that may be necessary and convenient for the construction, maintenance, and management of the said railroads, whether such real and personal estate may be situate or
478 may be granted, devised, given, or obtained by purchase, within the limits of the State of Alabama or elsewhere, and for the purpose of constructing said railroads within the State of Alabama the said corporation is hereby authorized to lay out their said railroads, or either of them, not exceeding two hundred feet wide, and to construct the same through and upon any lands of the State of Alabama, and also to take and to hold for the same and for the purpose of necessary depots, stations, cuttings, turnouts, and for obtaining stone, gravel, and timber for the construction of said railroads, any lands belonging to the said State of Alabama and lying along or adjacent to the route or course of said railroads that may be necessary for the construction, maintenance, and security of said railroads; and said corporation is also hereby authorized to lay out its said railroads, or either of them, within the State of Alabama, not exceeding two hundred feet wide, upon any lands within said State, and to take and possess the same, and for the purpose of necessary
479 turnouts, depots, cuttings, and embankments, and for

obtaining stone, gravel, and timber for the construction and maintenance of said railroads, to take and possess as much more land as may be necessary for the construction, maintenance, and security of said railroads:

Provided, That all damages that may be occasioned, or that may arise, to any person or persons, corporation, or association, other than the said State of Alabama, by the taking of such lands and material for the possession and use of said corporation as aforesaid, shall be paid for in the manner provided by this act.

SEC. IV. Be it further enacted, That the corporate powers of the said corporation shall be exercised and the business and business affairs shall be conducted and managed by nine directors, to be elected annually by the stockholders of said corporation at such time and place as may be hereafter named and designated in the by-laws of said corporation, and the
480 persons herein named as corporators shall be directors for the first year and until others are appointed or elected to fill their places.

All elections for directors shall be by ballot, and every stockholder shall be entitled to one vote in person, or by proxy, for each share of stock held and owned by him.

SEC. V. Be it further enacted, That the directors of said corporation, at their first meeting which shall be within six months after the passage of this act, shall elect one of their number president, and shall elect a secretary, and treasurer, of said corporation, and they shall adopt by-laws, and rules and regulations for the observance and government of said corporation, its officers and members, in the management of the business and business affairs of said corporation, and which shall provide for the election or appointment of such other officers and agents of said corporation, as shall be deemed necessary, and shall name the time and
481 place for the future annual meetings and elections of the stockholders of said corporation; at the same meeting the said directors shall determine the amount of the capital stock of said corporation, and the limits thereof, and the number of shares and the par value of each share, and shall provide for receiving subscriptions to the capital stock, and for opening books for that purpose; and the amount of the capital stock of said corporation, and the limits thereof, and the number and par value of its shares, shall not be thereafter changed, except by the vote of the majority of the stockholders in interest of said corporation at a special meeting, called for that purpose, by the president and secretary, by any five of the directors, or by a number of stockholders owning or representing one-fourth of the shares of said capital stock; a majority of said directors shall constitute a quorum for the transaction of business, and the number of said directors may be increased or diminished by a majority

vote of the stockholders in interest, at any future annual meeting, provided the number shall not be less than five and not more than seventeen.

The secretary of the said corporation shall enter upon the books of records of said corporation the proceedings of the first meeting of said directors, as also those of any adjourned meeting thereof; and the president shall, within thirty days thereafter, file a true copy thereof, certified by himself and the said secretary, under the seal of said corporation, in the office of the secretary of State, who is hereby authorized to receive and file the same among the records of his office, and which certified copy, as well as the original, shall be deemed and taken as conclusive evidence of the facts therein stated.

SEC. VI. Be it further enacted, That said corporation being authorized to purchase, receive, and hold such real estate as may be necessary and convenient in accomplishing the object for which this corporation is organized, it may, by its agents, surveyors, engineers, and servants enter upon all lands and tenements through which it may conclude to make such railroads, and survey, lay out and construct the same, and may agree and contract for the land, or right of way, with the owners of the land through which it intends to make said railroad.

In case said lands belong to the estate of any deceased persons, then, with the executor or administrator of such, or in case of the same belonging to a minor or person *non compos mentis*, then, with his or her guardian, or in case said lands be held by trustees of school sections, or other trustees of estates, then, with such trustees, and said executors, administrators, guardians, and trustees are hereby declared competent for such estate, person or minor, the contract with said company to use, occupy, and possess the lands of such estates, persons, minors, or trustees, as far as may be useful or necessary for the purpose of said railroads, and the act and deed of such executors, administrators, guardians, and trustees in relation thereto shall pass a title in such lands in the same manner as if the said deed or act was made or done by a legal owner of full age and sound mind, and such executor, administrator, guardian, or trustee, shall account to those interested in their respective bonds for the amount paid him in pursuance of such agreement and composition, and if the said company and the parties respecting lands prefer, they may refer the question of compensation to arbitrators, mutually chosen, whose award, or that of their umpire (in case of disagreement) shall vest title according to its terms.

SEC. VII. *Be it further enacted*, That if the said corporation is unable to agree for the purchase of any real estate, or the right of way thereupon, or any estate therein, required for the use and purposes of said corporation as provided in the preceding section, or is unable for any cause to obtain the title or right of

way therein, it shall have the right to acquire title to the
485 same in the following manner: The said corporation may apply to the supreme court for the appointment of commissioners of appraisal at any general or special term, or to any judge thereof in vacation, or judge of the probate courts, or it may apply to any circuit court of the county in which the said land lies, at any general or special term, or to any judge thereof in vocation, such application shall be made in writing and signed by the president or one of the directors of said corporation, or by an agent or attorney of said corporation, authorized for that purpose, and shall substantially set forth and state:

First. It must be entitled so as to describe the court wherein, or the judge to whom, the application is made, and the character of the application.

Second. The name and official character of the person applying in behalf of the corporation must be stated.

Third. The real estate which the corporation seeks to acquire must be described by metes and bounds, and the estate
486 therein which the corporation seeks to acquire must be set forth, and several parcels of land owned by different persons may be included in the application.

Fourth. That the corporation has not been able to acquire the estate in said lands required and the reason of such inability.

Fifth. The names of all owners or parties interested in said real estate so far as the same are known to the applicant, must be set forth, and if not known, that fact must be stated, a copy of such application and notice of the time and place the same will be presented must be served on all persons named in said application, as owners of, or interested in said real estate, at least five days prior to the presentation of the same; provided such owners so named, are residents, and can be found within the State, and are not infants, idiots, or persons of unsound mind.

SEC. VIII. *Be it further enacted*, That on presentation of the application to the court or judge therein named and no
487 person appearing to oppose said application, and whenever it shall satisfactorily appear from said application and proofs thereunto attached that service of notice of the time and place of the presentation of said application, upon all the owners and persons interested in the said land has been made, the said court or the judge thereof, shall forthwith make an order appointing three disinterested and competent persons who reside in the county where the premises are situate, or an adjoining county thereto, as commissioners, to ascertain and appraise the compensation to be made to the owners or parties interested in the real estate proposed to be taken by said corporation for its purposes, and shall fix the time and place for the first meeting of said commissioners. In case any person who shall be the owner, or who shall have a vested interest in said

premises, shall appear at the time and place of the presentation of such application, the said court or judge, before making said
488 appointment of commissioners, may hear such person, and said corporation in relation to any persons proposed for appointment as such commissioners, their place of residence, their competency, and interest; and after such hearing the said court or judge shall make an appointment of three commissioners as aforesaid, in accordance with the discretion and judgment of said court or judge. In case it shall appear by said application that any person, or any of the persons owning or interested in the said premises described in the application, or any part of the same, are not known to the said corporation, or are not residents of the county or State wherein said real estate is situate, or cannot be found therein after due diligence, or are infants, idiots, or persons of unsound mind, then, and in such case, the said court or judge before making said appointment of commissioners shall make such inquiries as to such owners and
489 parties interested in said premises, and shall make such orders for service of upon them or upon any persons in regard to said application, and such other order or orders in the premises as the said court or judge may deem necessary, proper, and just, and shall then make such appointment of commissioners as aforesaid, and in connection therewith make such orders as to the service of any future notice upon the owners of said premises of the meeting and appraisement of said commissioners, and the confirmation of the same, as may seem to said court or judge equitable and just.

SEC. IX. *Be it further enacted*, That the commissioners so appointed, or a majority of them, shall hold their first meeting at a time and place appointed by the court or judge, and may adjourn from time to time at their discretion.

They shall take and subscribe an oath before any officer authorized to administer oaths in the State of Alabama, to the effect that they and each of them will impartially and to the best of their judgment and ability perform the duties of said commissioners,
490 and one of said commissioners may issue subpœnas, and administer oaths to witnesses, whenever they meet to take testimony, or hear the parties, except by the appointment of the said court or judge, or pursuant to adjournment, they shall cause reasonable notice of such meeting to be given by any of the parties in interest who shall have theretofore appeared before them, or to their agent or attorney. They shall hear the proofs and allegations of the parties, and reduce the same to writing, and after all the testimony offered in the case, that in the judgment of said commissioners is pertinent to the value of said premises, is taken, they or a majority of them shall without unnecessary delay, ascertain and determine the compensation which ought justly and equitably to be made by the said corporation to the

owners, or persons interested in said real estate appraised by them, and said commissioners shall take into consideration, the owners or persons interested in said real estate may de-
491 rive from the construction of said proposed railroad for which said real estate is proposed to be taken.

They shall make a report in writing to the court or judge by whom they were appointed, which shall contain the proceedings in the case before them, with the minutes of the testimony taken by them, if any, and their award and determination.

They shall be compensated for services as such commissioners by the said corporation at the rate of five (5) dollars per day for actual service.

SEC. X. *Be it further enacted*, That on such report being made by said commissioners, the court, or judge, shall appoint a time and a place for the hearing of said corporation and of all parties interested in said lands, in regard to the confirmation of said report, and shall by order direct the manner and form of the service of any notice of the same upon any persons, that, in the judgment of the said court or judges should be notified, and on the day of such hearing, if no person shall appear to op-
492 pose the confirmation of the said report, the same shall be confirmed by the said court or judge, and an order shall be made reciting the proceedings of the appraisal, the confirmation of the same, and a description of the real estate, and directing to whom the money, or value of said real estate is to be paid, and in what manner the same shall be deposited by said corporation for the use and benefit of said owners, and if any person shall appear to oppose the confirmation of said report, the said court or judge shall hear the parties for and against such confirmation, and if said court or judge shall decide in favor of such confirmation then the same proceedings shall be had in the premises as heretofore provided, in case no person appeared to oppose said confirmation, and if said court or judge shall decide against such confirmation, an order shall be entered directing said com-
493 missioners, or other commissioners named in said order, to proceed to a re-appraisal of the said premises, the proceedings of which shall be afterwards conducted as in the first instance, except that the appraisal and report of the commissioners on the re-appraisal ordered, shall be final, and shall be confirmed by said court or judge, and the order of said court or judge confirming any appraisal as aforesaid, shall be final and conclusive upon all parties interested.

SEC. XI. *Be it further enacted*, That the order of said court or judge confirming an appraisal of lands as heretofore provided, or a certified copy of the same shall be filed in the office of the clerk of the circuit court of the county in which the said real estate appraised shall be situate, and there shall remain a record, and such order so entered and filed, shall vest in said corporation the

lands described therein, as such estate as may be therein set forth, on the payment or tender of payment, or deposit of the amount of the appraisal and damages by said corporation as provided in said order, and said order, or a duly certified copy thereof,
494 with proof of such payment and deposit as therein provided, will be considered as legal evidence of the title and estate of said corporation to the real estate described therein, all real estate acquired by appraisal by said corporation under and pursuant to this act shall be deemed to be acquired for public use.

SEC. XII. *Be it further enacted*, That the said corporation shall be exempt from all taxes in the said State of Alabama, of whatever name or nature, including State, county, town, city and municipal taxes, except that a State tax of three per centum on all dividends declared and paid to the stockholders of said corporation from time to time, shall be paid by said corporation to the State through and in which the said railroads of said corporation shall be constructed and maintained as provided in this act, and the amount of said tax paid to each shall be in the same proportion to the whole amount as the length of said railroads, or either of them, constructed and maintained in each State shall bear to the collective length of the said railroads constructed
495 and maintained in all of the said States, and the proportion of said tax to be paid to this State shall be due and payable and shall be paid to the treasurer of the State by said corporation, at the time any such dividends shall be so declared, and shall be due and payable by said corporation.

SEC. XIII. *Be it further enacted*, That said corporation is authorized to construct its said railroads, or any part of the same, across, along, or upon any stream of water, water course, river, bay, inlet, street, highway, turnpike, or canal, which the route of its said railroad may intersect or touch, but the said corporation shall preserve the stream, water course, river, street, highway, turnpike, or canal, thus intersected, touched, or crossed, so as not to impair its usefulness unnecessarily, or if temporarily impaired, by said corporation in constructing said roads, the corpor-
496 ation shall restore the same to its former state, or to such a state as not to have unnecessarily or materially impaired its usefulness and convenience to the public.

SEC. XIV. *Be it further enacted*, That the said corporation is hereby authorized to cross, intersect, join, and unite its railroads with any other railroad heretofore or hereafter constructed in the State of Alabama, at any point on its route and upon the grounds of such other railroad company, with the necessary turnouts, sidings, switchings, and other conveniences in furtherance of the objects of its connections, and every railroad in the State of Alabama, whose railroad shall be hereafter intersected by the railroads of this corporation, shall unite with it in forming such intersections and connections, and grant the facilities afore-

said; and if the said railroad companies cannot agree upon the points and manner of such crossings, intersections, and
497 connections, and the division and apportionment of the cost and expense of the same between said companies, the same shall be ascertained and determined by commissioners appointed by the court, as provided in this act in respect to acquiring title to real estate.

SEC. XV. Be it further enacted, That said corporation shall have power to purchase and lease from any railroad company or corporation, within or without the limits of this State, its railroad, and the charter, franchise, property, and appurtenances of such railroad company, and maintain, manage, and use the same, whenever it shall be deemed expedient and convenient by the directors of said company; that such railroad shall be connected and consolidated with the railroads of this corporation, and this corporation, instead of constructing the said railroad, or during the construction of the same, or portions of the same,
498 from Mobile to Chattanooga, as in the second section of this act, provided, [they] shall have power to purchase or lease from any railroad company, or companies, corporation, or corporations, within or without the limits of this State, its railroad, and its, or their, charter, franchises, property, and appurtenances, and maintain and manage and use the same as a part of said continuous line of railroad between Mobile and Chattanooga aforesaid; and this company shall have power, and are hereby authorized to pay for such railroads, their franchises and property, in money, or in the capital stock of this corporation, or in the bonds of their corporation, secured by mortgages upon the railroads, the franchises, and property of this corporation; and in like manner, this corporation may obtain by purcase, or grant, from any person or corporation, and afterwards maintain, manage, use, and enjoy, any railroad, railroad property, and appurtenances, or any steamboats, piers, wharves,
499 and the appurtenances thereunto belonging, that the said directors may deem necessary, profitable and convenient, for this corporation to own, use, and manage, in connection with its said railroads.

SEC. XVI. *Be it further enacted*, That this corporation is hereby empowered and authorized to enter into any mutual contract with any railroad company, or companies, corporation, or corporations, within or without the limits of this State, by which the railroads of such companies, or corporations, shall be consolidated with the railroads of this corporation, or any parts of the same, and from one continuous or connecting railroad to be known by one common name, and by which the capital stock of this corporation, and such other companies, or corporations, shall become merged and consolidated into one joint and common stock, and be and exist, as one company or corporation, with

the seal, one president and one board of directors, and
500 such company or corporation when so formed, shall have, possess, and enjoy, in this State, all the power, franchises, rights, and privileges, herein granted to, or vested in, this corporation, by virtue of this act, or any and all subsequent amendments and additions thereto.

And said corporation is also authorized and empowered to hereafter take and receive any rights, grants, franchises, or privileges from the United States or any one of the United States, and thereafter own, exercise, and enjoy the same, and under and by virtue of the same the said company may build and extend its railroads without this State and thereafter maintain and use the same as it may deem advisable and beneficial for its interests; and in case of a combination, consolidation, or merger of several companies into one company, as contemplated in this section, the common name of such company so formed may
501 *be designated and agreed upon by and between the several railroad companies parties to the mutual contract for such combination and consolidation in their articles of agreement or contract, and when such name is adopted and chosen this corporation shall be thereafter known by such name.*

Note.—That part of Section XVI printed in italics is added by an act of the General Assembly approved February 12, 1867.

SEC. XVII. *Be it further enacted*, That this corporation is authorized and empowered from time to time to borrow money or to purchase property on its own credit for the purpose of constructing and maintaining said railroad or establishing continuous and connecting lines of railroad as heretofore provided, and as evidence of the indebtedness of said company for such loans or the purchase of such property may issue its corporate bonds and promis-
502 sory notes bearing interest at a rate not to exceed eight per cent. per annum, and to secure the payment of said bonds and notes may mortgage its railroads, its capital stock, its corporate franchise, and any of its real or personal property, or a part or portion of the same; and it may by its president or other officers or agents, duly authorized by its directors, sell, dispose of, or negotiate such bonds or notes, or may sell, dispose of, or negotiate its capital stock, or any of its personal property, at such times and places, and at such rates and for such prices, either within or without the limits of this State, as in the judgment of said corporation or its directors will best advance its interests, and if such bonds, notes or stock are thus sold at a discount, such sale shall be in all respects valid and binding upon this corporation, and such stock, bonds or notes shall be as valid
503 for the par value thereof, as if the same had been sold at par value.

SEC. XVIII. *Be it further enacted*, That the said corporation can sue and be sued only in such courts of this State as are courts of

record, and service of process in any action against the said corporation can be made only by service of the [process] upon either the president, secretary, treasurer, or any of the directors of said corporation.

SEC. XIX. Be it further enacted, That if any person or persons, will or shall willfully do, or cause to be done, any act or acts whatever whereby any building, construction, or work of said corporation, or any engine, machine, or structure, or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the said corporation double the amount
504 of damages sustained by reason of such offenses or injury, to be recovered in the name of said corporation, with costs of suit by action of debt, and such offenders shall also be subject to indictment, and shall be sentenced, on conviction, at the discretion of the court, for a period not exceeding eighteen months.

SEC. XX. Be it further enacted, That this act shall be favorably and liberally construed, so as to favor all the purposes and objects of the same, and the operations of the provisions thereof.

SEC. XXI. Be it further enacted, That the road between Mobile and New Orleans, shall be commenced within four months and completed within three years.

NOTE.—Sec. XXI was repealed by an act of the General Assembly of Alabama, approved August 12, 1868.

505 SEC. XXII. Be it further enacted, That the road between Mobile and Chattanooga shall be commenced within eighteen months, and be completed within six years, and upon failure to comply with the requirements of the last two sections of this act this charter shall be forfeited.

Provided, however, That if said company shall fail to comply and should incur a forfeiture as aforesaid, such forfeiture shall only apply to the rights and privileges of said company to finish and complete said railroads or any portion of the same incomplete, and the rights and privileges applying to such unfinished or forfeited portions, between the said points in the two last sections named, and shall in no wise apply, to or forfeit the rights of said company, to maintain, use, and enjoy the portions of said railroads at the time complete and finished, nor to any other rights and franchises secured to said company under this charter.

506 NOTE.—That part of section twenty-two printed in italics is added by an act of the General Assembly of Alabama, approved February 12, 1867, and the entire section is repealed by an act approved August 12, 1868.

(Sig.) THO. B. COOPER,
Speaker of the House of Representatives.

(Sig.) WALTER H. CRENSHAW,
President of the Senate.

Approved November 24, 1866.
(Sig.) ROBERT M. PATTON,
Governor of the State of Alabama.

Ordinances 6015, 6021.—*Jewell's Digest, Art.* 91, *p.* 410.

ART. 91, (7.) That the lease and grant of the ferry at and near the foot of St. Anne street, as per ordinance No. 2299, old series, approved July 10, 1855, and ordinance 799, new series, approved December 15, 1867, and other ordinances and statutes now held by Morgan's Louisiana and Texas Railroad and Steam-
507 ship Company, be, and the same are, extended for thirty —— from approval of this ordinance: *Provided*, That nothing herein contained shall be construed as prohibiting the city of New Orleans from selling and granting the ferry privilege at the head of St. Anne street, known as the Second District Ferry, and now under lease to J. T. Bindeau, reserving to the railroad company, however, the full and undisturbed use of the wharf at which said ferry now lands, and which the said railroad company is to obligate itself to keep in repair, the lessee of said second district ferry to keep in repair the necessary passenger and vehicle, gangways used by the said ferry and connected with the said wharf.

ART. 92, (8.) That no future administration of the city of New Orleans shall —— the right to pass any ordinance or ordinances which shall conflict with this ordinance, except other railroad
508 companies connecting this city with Texas shall desire the use of the depot and tracks laid down by the Morgan Company between Barracks and Marigny streets; the city council reserves the right to grant said railroad company, with the consent of the Morgan Company, the privilege to use said depot and tracks, after payment to the Morgan Company of a proportionate share of the expenses of erecting said depot and laying said tracks, the same to be ascertained by two experts, one representing the Morgan Company and one representing the other railroad company, and in case of non-agreement, the city to appoint a third party, whose decision shall be final.

ART. 93, (9.) That the city surveyor be, and he is hereby, directed to prepare plans, at the expense of said company, representing the grounds, streets, and landings, etc., the use of
509 which is granted to said Morgan Company by this ordinance, which plans, after approval of city council, shall be deposited in the office of the city surveyor, and shall be used for the purpose of accurately describing the extent of the grant herein made.

ART. 94, (10.) That the said Morgan's Louisiana and Texas Railroad and Steamship Company, under the direction of the administrators of commerce and improvements, and the city sur-

veyor, to so arrange the landings as to permit the stern of their boats to project seventy-five (75) feet below the lower line of Marigny street, provided that the said Morgan's Louisiana and Texas Railroad and Steamship Company shall rebuild, at their own expense, at such points as may be designated by the administrators of commerce and improvements, and the city surveyor, any and all wharves of the use of which the city of New Or-
510 leans may be deprived by the granting of the above privilege.

ART. 95, (11.) Any material violation of the foregoing provisions shall act as a forfeiture and annul most of all the rights and grants made under this ordinance, and it shall not be necessary for the city of New Orleans to put said company in default as per article 1911 Civil Code.

Whereas, Morgan's Louisiana and Texas Railroad and Steamship Company, by ordinance No. 6015, administration series, and other ordinances and statutes, have a lease of the landing at and near the foot of St. Anne street, and under several ordinances and acts have, for many years, occupied the tract of land in front of Jackson square, bounded by St. Anne, Decatur (old levee,) and St. Peter street, and the levee (or Clay street,) being about three hundred and fourteen feet in length, and one
511 hundred and twenty feet in depth, and have applied for a lease of said tract of land for a term of years.

ART. 96. The said described tract of land be, and the same is, hereby leased to said Morgan Company for the term of fifty years.

(2.) For and in consideration of said lease the said company shall pay in cash the sum of thirty-five thousand dollars.

ART. 97, (3.) The railroad tracks as now laid by said company in front of said tract of land shall not be disturbed by the city during this lease.

(4.) The said company shall, during said lease, have the right to erect building of brick, or brick and wood, or wood only, provided the roof be of non-combustible material.

ART. 98, (5.) At the expiration of said lease the improvements on said property shall revert to the city of New Orleans
512 at a price to be fixed by a majority of three commissioners, one to be selected by the city, one by said company, and one to be selected by the said two commissioners.

513 *Testimony of Robert W. Rogers,*

From Record 144, and now 17, U. S. Supreme Court, offered by the defendants.

Robert W. Rogers, a witness produced, sworn, and examined on behalf of complainants, says—

By Mr. CAMPBELL:

Q. Were you in the employ of the New Orleans, Mobile and Chattanooga Railroad Company in the years 1868, 1869, and 1870?

A. I was.

Q. What employment did you have?

A. Civil engineer.

Q. Had you any intercouse with the property in possession of the company between Calliope street, Water street, and the Mississippi river?

A. Yes, sir.

Q. Are you familiar with the condition of the property during these years?

A. Yes, sir.

Q. What was the condition of the property between Calliope street, Water street, and the river?

A. It was all an open space, unoccupied.

514 Q. Were there any streets laid out; I mean by laid out, staked out and filled—filled up so that you could see there was a street?

A. No, sir.

Q. Between Water street, Girod street, and the river?

A. No, sir.

Q. What was the condition of the ground between Calliope street, Girod street, and Water street?

A. At the intersection of St. Joseph street and Water street there was a large pond. There was another large pond between St. Joseph and Julia, and also at the foot of Calliope street, and near the foot of it. The ground was generally low around in that locality.

Q. Did you have to do a great deal of filling up to make it passable, in order that it might be occupied?

A. Yes, sir; I had.

Q. Can you give us any information as to what you did?

A. It took about twenty-five thousand yards of earth, according to the measurements I made at that time, to fill up at the intersection of St. Joseph and Water streets, and we filled the greater portion of it at that time, and between there and

515 St. Joseph street extended there beyond the line of Front street. Front street is the next street to Water street, and the other streets—Julia and Notre Dame streets—at that point, were in an impassable condition. There was a bridge across there at that time for foot passengers to go across, and that was the only way to get by. Besides these twenty-five thousand yards of earth that I speak of, we filled up another hole near the foot of Calliope street, which probably took two or three thousand yards more.

This filling that I speak of was simply filling it up to the point where we could use at that time. Since that time we have put in considerably more filling during the years following, and for the last three years we have been putting in filling.

Q. Do you know whether the taxes have been paid?

A. Yes, sir; the taxes have been paid up to the present time, with the exception of the assessment made this year on the capital of the company. It amounted [to] about $9,000, according to my recollection. That I do not think was paid. It was
516 not assessed on the property itself, but it was on the capital. All the property taxes have been paid. I suppose they amount to between $4,000 and $5,000.

Cross-examined.

By Mr. KING:

Q. Does not that railroad own a number of squares of ground in that vicinity, between Water street and the river?

A. Yes, sir.

Q. You spoke of the taxes being paid, was not it—the taxes—paid upon the ground that the railroad had purchased and owned?

A. I cannot answer that question, for I don't know whether we have paid on the property, the use of which was granted by the State or not; I think we have paid some taxes. I do not know that we could tell from what records we have got down there now. My impression is that we paid taxes on land that did not belong to the company.

Q. You are not certain on that point?

A. I am not certain. I do not know whether we could
517 tell from the data we have, but we could tell by looking it up.

Q. Did you pay taxes on the streets or lines of streets, that you occupied in putting improvements there?

A. I should presume not, but I am not certain.

Also, offered by defendants E. E. Godden, a witness produced, sworn, and examined on behalf of the complainants, deposes and says:

By Mr. CAMPBELL:

Q. Have you been in the employ of the New Orleans, Mobile and Chattanooga Railroad Company?

A. Yes, sir.

Q. At what time?

A. I think I commenced work on the 17th April, 1870.

Q. What were you employed at?

A. In the yard, then, as locomotive engineer on the construction train.

Q. Are you acquainted with the condition of the ground in that neighborhood, which was in the possession of the New Orleans, Mobile and Chattanooga Railroad Company?

A. Yes, sir.

Q. What was its topographical position at that time?

518 A. It was very low.

Q. Were any streets open between Water street and the river at that time?

A. Between what other streets?

Q. Between Water street and the river, and Calliope street and Girod?

A. I think that possibly a dray might go down Julia street, but it was very bad going down there; not at all seasons, but at St. Joseph street, none; I do not think there was any regular outlet nearer than Girod street towards Canal, and from Calliope street.

Q. Who was it opened or filled up these streets, or ground on which the streets would go, if they were marked out in that locality?

A. The railroad company.

Q. Were there any streets parallel to Water street, and between Water street and the river open at that time, and filled up?

A. No, sir.

Q. What was the condition of Water street at that time?

A. Between Julia and Calliope, it was a mud hole all the way, and the biggest part of the way it was a deep bend; there

519 was a plank walk across it, but for sometime it was dangerous, and the people would not go across. The stanchion supporting the plank walk had given away, and fell into the water, and it was dangerous to pass. We used to have to go around Calliope street to get to the train when it stood at the foot of St. Joseph street.

Q. And it was an unreclaimed swamp between these boundaries?

A. Yes, sir.

Cross-examined.

By Mr. KING:

Q. Are there any buildings or permanent constructions on the line of these streets that have since been closed about the Girod street?

A. Not between Water street and the river.

Q. Has or has not the railroad company put permanent buildings across the extension of Girod street, St. Joseph, North and South Market and Delord?

A. I think not across Girod street; Girod and Julia are both open; St. Joseph street is closed, and Notre Dame closed;

520 but North and South Market, I never saw them open.

By Mr. CAMPBELL, for complainants :

Q. You say St. Joseph street and Notre Dame are closed, and Water street, Julia and Girod streets, are open ?

A. Yes, sir ; St. Joseph street never was open ; it was always impassable.

NEW ORLEANS, *November 9th*, 1882.

Extract from the minutes of Board of Liquidation of a meeting held October 13th, 1882.

Mr. Gomila moved that the $40,000 now in the hands of the administrator of finance be enjoined, and the attorney be directed to institute legal proceedings at once.

Adopted.

A true copy.

(Sig.) T. WOLFE, JR.,
Secretary.

NEW ORLEANS, *November 9th*, 1882.

Extract from the minutes of the Board of Liquidation of a meeting held October 17th, 1882.

Mr. Phelps moved that the resolution heretofore adopted
521 by the Board be so far modified as to authorize the attorney of the Board to take such steps as in his judgment are requisite to set aside the recent agreement of compromise between the city and the N. O., M. and C. R. R. Co. to maintain and reinstate the appeal proposed to be dismissed by such agreement, with power to associate with him counsel in Washington, to appear in the Supreme Court, to oppose the dismissal of the appeal, and to hold the fund decreed from said compromise, so as to restore it if the compromise is annulled, or to claim it for the Board if said compromise becomes a finality.

Carried.

A true copy.

(Signed) T. WOLFE, JR.,
Secretary.

Edward A. Palfrey, being duly sworn, deposes and says that he was the acting president of the Board of Liquidation on the 13th and 17th of October, 1882 ; that the meeting of the 13th of October was called owing to an announcement in the daily
522 papers that the city council had compromised with the New Orleans, Mobile and Texas Railroad Company a law suit involving land of the city of New Orleans, of very great value, for $40,000, paid by the railroad company ; the papers also announced that the city council proposed to appropriate the $40,000 to pay some deficit in their current expenses. This newspaper announcement was the first intimation the board had of

the transaction. The board regarded the transaction as illegal in the highest degree, and as a sacrifice of the public interests. The board met and urged upon the city officers, members of the board, to recede from the transaction, because they had no right to dispose of the property which the law had transferred to the board. It was further urged at the board, that even if the transaction was legal, the city had no right to the proceeds. The city officials answered they would stand by
523 the transaction notwithstanding the protest of the board. That meeting ended with the determination by the board to at least stop the appropriation by the city officials of the $40,000, as proposed by them, and the attorney was directed to notify the city council that the board would assert its right to the fund, and that they would be held liable if that money was paid out.

This had the effect of stopping the money, and it is still held by the city. Later, on the 17th of October, the board met again and resolved to take all necessary steps to prevent the compromise from being carried into effect, as appears by the resolution adopted at the meeting. Two of the city officials who are members of the board, as well as of the city council which passed the compromise, declared that they would have voted for the resolution if they had been present at the board when it passed.

(Signed) ED. A. PALFREY,
Acting President Board of Liquidation City Debt.

524 Sworn to and subscribed before me, at New Orleans, La., this 10th day of November, 1882.

(Signed) SAMUEL FLOWER,
Notary Public.

[*Official.*] *City Ordinances.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January 25th*, 1881.

(No. 6824. Administration Series.)

An Ordinance amending and re-enacting Ordinance No. 6716, A. S., passed November 19, 1880.

Resolved, That the ordinance of the council of the city of New Orleans of November 19, 1880, No. 6716, administration series, granting to H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns the right to lay pipes, mains and conduits in and along the streets, parks, sidewalks, gardens, alleyways, bridges, avenues and other places within the limits of the city of New Orleans, and the right to enter upon and break the surface of said streets, parks, gardens, alleyways,
525 bridges, avenues and other places, and to excavate the same for that purpose, be amended so as to read as follows:

Be it ordained by the council of the city of New Orleans, that H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall be and are hereby authorized, for the perion of fifty years, to lay at their own expense, any and all necessary mains, pipes and conduits in and along the streets, alleyways, sidewalks, bridges, avenues, parks, gardens, and other places within the limits of the city of New Orleans, for the purpose of supplying all buildings, erections, etc., when needed, with gas and are to that end authorized to enter upon any and all said places, and to break, at their own expense, the surface and make the necessary excavations thereon when the same may be required for the aforesaid purposes, in such manner as to produce the least possible inconvenience to the city, its inhabitants, or the traveling public, on the following terms and con-
526 ditions, to wit:

SECTION 1. Be it ordained, etc., That the aforesaid H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall repair, at their own expense, and under the superintendence of the administrator of improvements for the city of New Orleans, any and all places entered upon and broken by them for the purpose herein mentioned, and shall reinstate said places in as good condition as when entered upon by them.

SEC. 2. Be it further ordained, etc., That if said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall fail to repair said streets, parks, gardens, bridges, alleyways, avenues, and other places so entered upon and broken by them within a reasonable period of time, and after a written notice to that effect from the administrator of improvements as to the particular place to be repaired, they shall be liable to a penalty of twenty-five dollars per day for each and every day elapsing between such notification above given and the
527 completion of each set of repairs required by each notification, and such twenty-five dollars per day for each separate repair to be made is hereby accepted by said parties as a penalty in the nature of liquidated damages, to be recovered by the city of New Orleans before any court of competent jurisdiction; in case work is not commenced after five days' notice the administrator of improvements shall perform the work at their expense.

SEC. 3. Be further ordained, etc., That said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall not charge, and hereby bind themselves not to charge, to the city or any of the inhabitants thereof, for illuminating gas manufactured and sold by them a price greater than two dollars and fifty cents ($2.50) per 1,000 cubic feet, with ten per cent. off to private consumers if paid within ten days after monthly bill rendered, to insure prompt payment; that the quality
528 of the gas to be manufactured and sold by them shall not

be less than twenty candle power, of good commercial character, and as free from deleterious compounds as the nature of the manufacture will permit, and at no time less than twenty candle power, and that said parties shall never, except as hereinafter permitted, make any sale or transfer to, or combination with any other gas company or individual, nor shall they make any arrangement or combination, whereby the privileges in this ordinance contained are rendered inoperative in whole or in part, or by virtue of which they shall agree not to lay mains in certains portions of the city, or by virtue of which any agreement is made with reference to fixing the price of gas to be sold to consumers.

SEC. 4. Be it further ordained, etc., That in case said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall sell or dispose of the rights and privilegs granted by this ordinance, except to a corporation organized for the purposes herein expressed, and of which H. S. Jackson,
529 W. Van Beuthuysen, their successors, transferees, and assigns, shall be incorporators, or, if they fail to comply with the provisions of this ordinance within twelve months after any litigation that may occur, including the termination of appeals, if any, and within six months in case of no litigation, then this ordinance shall be *ipso facto* null and void, and the franchise annulled and revoked.

SEC. 5. Be it further ordained, etc., That said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall at their own expense make all connections between the mains, shall furnish all metres, and shall conduct the gas through the streets wherever mains shall be laid to the metres in use in the houses of the consumers of it.

SEC. 6. Be it further ordained, etc., That said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall supply, if required, the gas to the street lamps, public
530 buildings, and offices of the city corporation on the line of such mains at the rate of not more than one dollar and fifty cents per one thousand cubic feet.

SEC. 7. Be it further ordained, etc., That all rights and claims conferred upon said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall be subject to all police ordinances (not violating the contract and vested rights and provisions of this ordinance) that may hereafter be passed by the council of the city of New Orleans with regard to the same.

SEC. 8. Be it further ordained, etc., That said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall within ninety days after the passage of this ordinance, file with the mayor of the city of New Orleans a written acceptance of its provisions, and a failure to comply with this provision shall

be considered as an abandonment and waiver of their right under this ordinance.

531 SEC. 9. Be it further ordained, etc., That said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall begin within six months of the time of filing with the mayor of the city of New Orleans their written acceptance of the provisions of this ordinance, to provide their buildings, put up their machinery, and lay their mains, pipes, and conduits in good faith; it being provided, however, that should the said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, be prevented by reason of litigation from complying with the conditions herein imposed, the time for the beginning of providing buildings, etc., as above provided, shall be extended to six months after the termination of said litigation, including appeals, if any.

SEC. 10. Be it further ordained, etc., That the rights and privileges herein conferred shall not, in any manner, render the city of New Orleans liable to any other gas company to whom
532 franchises may have been granted by legislative enactments, and that the said grantees accept the privileges herein given, with the understanding that the city of New Orleans is not to be made a party to any legal action which may be brought by any individual or corporation against said grantees.

Nothing in this ordinance, or in the grant to lay mains, pipes, conduits, or other rights, or in the notarial act made in pursuance of this ordinance, shall be construed as binding the city of New Orleans, or in making the city liable, directly or indirectly, or in warranty of any claim of citizens or corporations on account of said ordinance, grant, or notarial grant, or any claim for infringement of rights or damages to persons or property caused by the grantees, or in any way resulting from the acts of said grantees, nor for any claim for damages, losses, or injuries sustained by the said grantees in case they should be deprived of their rights or be interfered with in the exercise thereof by any person or
533 corporation whatever, save it be by the lawfully constituted authorities of the city; nor shall the city be liable for any work done or material used in paving or repairing banquettes or streets, or any public thoroughfare, in pursuance of this grant or under the direction of said contract with said grantees.

SEC. 11. Be it further ordained, etc., that said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, bind themselves to furnish, free of charge, charitable institutions, to be designated by the city council, the same quantity of gas for illuminating purposes now supplied to the asylum of the "Little Sisters of the Poor," "Saint Vincent's Infant Asylum and Charity Hospital," by the New Orleans Gaslight Company.

SEC. 12. Be it further ordained, etc., that said Henry S. Jack-

son and W. Van Benthuysen, their sucessors, transferees, and assigns, shall pay the sum of ($20,000) twenty thousand dollars for the use of the privileges herein granted to the city be-
534 fore the delivery of gas to consumers shall be permitted, and in the event of the nonpayment of said $20,000, all the rights, privileges, and franchises granted to them by this ordinance shall be *ipso facto* null and void.

SEC. 13. Be it further ordained, etc., that at the expiration of said privilege, if the city shall so elect, the grounds, buildings, machinery, and all other fixtures appertaining to the same shall revert to the city of New Orleans, at a valuation to be ascertained by two disinterested persons, one to be appointed by the grantees, as herein stated, or their legal successors, and the other by the city, and in the event of disagreement as to said valuation between said persons thus appointed, a third person, or umpire, shall be appointed by the civil district court of New Orleans, on the joint application of said parties, the decision thereby had to be final.

SEC. 14. Be it further enacted, etc., that H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns,
535 will, at the request of the administrator of improvements and the concurrence of the city council, lay pipes and mains and furnish gas in such portions of the city now lighted by gas.

SEC. 15. Be it further enacted, etc., That said H. S. Jackson and W. Van Benthuysen, their successors, transferees, and assigns, shall deposit with the mayor of the city a good and solvent bond in the sum of $20,000 at the time of accepting this ordinance, for the faithful performance of the obligation herein provided, said bond to be returned to said grantees on the payment of the $20,000 bonus and completion of their works and when the same are in operation, or in event that litigation shall prevent the performance of the obligations herein imposed.

The amount of said bond to revert to the city in the event of any combination or compromise being entered into between the grantees and any like corporation now existing and in operation, the amount of the said bond herein to be recoverable
536 before any court of competent jurisdiction.

Adopted by the council of the city of New Orleans, January 25th, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealy, Walshe.

JOS. A. SHAKSPEARE,
Mayor.

A true copy.

M. McNAMARA,
Secretary.

537 No. 28.] An act relative to the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama, and authorizing and empowering said company to exercise and enjoy its corporate powers and franchises in the State of Louisiana.

Offered by Defendants.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the New Orleans, Mobile and Chattanoga Railroad Company, a corporation incorporated, organized, and existing under and by virtue of its act of incorporation duly enacted by the Legislature of the State of Alabama, entitled an Act to incorporate the New Orleans, Mobile and Chattanooga Railroad Company, approved November 24, 1866, and amended by an act approved February 12, 1867, is hereby recognized and ap-
538 proved as a body politic and corporate, with all the powers, privileges, rights, and franchises granted to it by the said State of Alabama in and by said act of incorporation, hereby adopting, confirming, and approving all the provisions of said act of incorporation granted to said company, so far as the same may be applicable to this State and may be adopted, approved, and confirmed thereby. That said company is hereby invested with the powers, privileges, and franchises granted to it in the said act of incorporation, and is empowered and authorized to exercise and enjoy the same in the State of Louisiana, and to have, exercise, and enjoy all the rights, powers, privileges, and franchises pertaining to corporate bodies within the State of Louisiana necessary for the full enjoyment and exercise of said rights, powers, privileges, and franchises granted and secured to it by its said act of incorporation, and necessary to secure, attain, and accomplish the objects and purposes of its incorporation in the same manner and with like power and effect as if said company
539 had been incorporated by virtue of any grant or law of this State, subject only to the conditions, provisions, and restrictions of this act as hereinafter set forth.

SEC. 2. Be it further enacted, etc., That to enable said company to accomplish the purposes and objects of its incorporation, the furtherance and pursuit of which in the State of Louisiana is hereby granted, the said company is hereby empowered and authorized—

First. To locate, construct, and build, and thereafter to own, maintain, and use, by running thereon its engines, cars, and trains of cars, a railroad, with one or more tracks and suitable turnouts, from any point between Calliope and Girod streets, and between Delta street and the levee, in the city of New Orleans, along and upon the levee in said city, or along and upon a street or streets near the levee, as may be deemed most proper

and expedient: *Provided*, That the grounds and buildings now owned by the Pontchartrain Railroad Company, or any other railroad company, between Girod, Poydras, Delta, and Water streets, shall not in any manner be interfered with, to a point at or near the junction of the levee and Spain street; thence by a curved line to Enghein street; thence along and upon Enghein street and Lafayette avenue to Claiborne street, and thence upon such a course or route as may be deemed, by a majority of the directors of said company, most proper, expedient, or necessary, and best adapted for the public accommodation, to any point on the line between the State of Louisiana and the State of Mississippi, and thence extending the same through the States of Mississippi and Alabama to the city of Mobile, in the State of Alabama, and thence to other places, as provided in said act of incorporation: *Provided*, That in the construction of that part of said railroad and tracks, and turnouts thereof, between Calliope street and Claiborne street, the said company shall not in any manner obstruct or impair the drainage of the streets along, upon, or across which the said part of said railroad is hereby located, and that the said company shall at all times, in the construction and maintenance of the said part of said railroad conform with the levels and grades to be established by the city surveyor of New Orleans; and whenever the company shall find it necessary to cover the channel of any drain, the sides thereof shall be first protected with bricks or wood in a good a good and substantial manner, and such covered channel shall be kept in repair, open and clear for the passage of water, by said company; and the said part of said railroad shall be so constructed and maintained as not to in any manner unnecessarily impair the usefulness of any street, or impair the traffic thereon.

Second. To locate, construct, and build, and thereafter to own, maintain, manage, and use, by running thereon its engines, cars, and train of cars, and railroads, with one or more tracks and suitable turnouts, from a point on Rampart street, between Lafayette street and Girod street, in the city of New Orleans, across, along, and upon intervening [—] and grounds, in such a course as may be deemed necessary by a majority of the directors of said company, to the said neutral ground in the centre of Claiborne street, thence along and upon the central portion of said neutral ground in the centre of Claiborne street, to St. Bernard avenue; thence in a direct line with Claiborne street to the line of Lafayette avenue, and thence upon such a course or route as may be deemed by a majority of the directors of said company, most proper, expedient, or necessary, and best adapted for the public accommodation (to any point on the line of railroad hereinbefore authorized, between the junction of Lafayette avenue with Claiborne street and the said line and the State line;

and thence along said line of railroad) to any point on the line between the State of Louisiana, and the State of Mississippi, and thence extending the same through the States of Mississippi and Alabama to the city of Mobile in the State of Alabama; and thence to other places as
543 provided in said act of incorporation. (And the said company may, if it shall be deemed by a majority of its directors expedient and necessary for its interests, locate, construct, maintain and use as hereinbefore designated, a railroad with one or more tracks and necessary turnouts, from the junction of Claiborne street and St. Bernard avenue, along the central portion of the neutral ground in the centre of Claiborne street to Elysian Fields street, and then easterly by such a course as may be deemed proper and expedient by a majority of the directors of the company, to a junction with the line of railroad hereinbefore authorized, and southerly along and upon Elysian Fields street to the levee line hereinbefore authorized.) And the said company may locate, construct and build, and thereafter own, maintain, manage and use, by running there on its cars, drawn by the power of horses or mules, a railroad with one track upon and along Girod street, from Liberty street to the Mississippi river, with necessary turnouts, to and from a freight
544 depot located on any grounds near the levee which the said company may acquire for the purpose; but in the construction of such railroad in Girod street and the turnouts thereof only such iron rails shall be used as shall least impede the traffic of the streets, and such as shall be approved by the city surveyor. And the said company may locate, construct and thereafter maintain and use, for the safe and convenient transactions of its business, a passenger depot and a freight depot, and [such] other structures as it may deem necessary for its business and purposes, upon the three blocks of grounds bounded by Girod street, Lafayette street, Liberty street, and Rampart street, in the city of New Orleans; and may close and occupy for such purpose that portion of Franklin street and portion of Basin street lying between Girod street and Lafayette street in said city; and the said company may inclose for its business and purposes the three blocks of ground, bounded by Perillat street, Locust
545 street, Lafayette street, and Liberty street in said city; and may close and occupy for its business and purposes that portion of Freret street and that portion of Howard street lying between Perillat and Lafayette street, and that portion of Perillat street lying between Liberty street and Locust street, in the city of New Orleans: Provided, however, That the said company shall, before constructing said depots, acquire the title to all private property to be occupied and used therefor, by purchase or in accordance with the provisions of this act.

And provided further, That the said company shall, for its

crossings of Carondelet canal, construct and maintain a drawbridge adapted and suitable for its own use and the free use of the public and the passage of carriages and vehicles, which, when open, shall give a clear space for the passage of vehicle of not less than fifty (50) feet in width, and said company, after the construction of said drawbridge, shall at all times thereafter
546 provide that said drawbridge shall be opened for the passage of any and all vessels seeking to pass through the same without unnecessary delay, and to keep the same always in repair and good order for the aforesaid use of the public.

And provided further, That in the construction of that part of said railroad, and the tracks and turnouts thereof, between the levee and Elysian Fields street, the said company shall not, in any manner, obstruct or impair the drainage of the streets along, upon, or across which the said part of said railroad is hereby located, and that the said company shall at all times in the construction and maintenance of the said part of said railroad, conform with the levels and grades to be established by the city surveyor of New Orleans, and whenever the said company shall find it necessary to cover the channel of any drain, the sides thereof shall be first protected with bricks or woodin good and substantial manner, and such covered channel shall be kept in repair
547 open and clear for the passage of water by said company, and the said part of said railroad shall be so constructed and maintained as not to in any manner unnecessarily impair the usefulness of any streets, or impede the traffic thereon.

Third. To construct and build, and thereafter to own, maintain, manage, and use, by running thereon its engines, cars and trains of cars, a railroad with one or more tracks, and suitable turnouts upon such course or route, as may be deemed, by a majority of the directors of said company, most proper, expedient, or necessary, and best adapted for the public accommodation, and most for the interest of said company, from its terminus, as hereinbefore designated, on or near the levee in the city of New Orleans, in the State of Louisiana, toward, and to, any point on the line between the State of Louisiana and the State of Texas: Provided, however, That the part of the said railroad
548 within the corporate limits of the city of New Orleans, shall be located and built upon and along the levee, or upon and along a street or streets, near the levee, unless otherwise authorized by the municipal council of the said city of New Orleans; And, provided further, That the crossing of the Mississippi river, unless otherwise authorized hereafter, shall be by means of a ferry-boat of suitable construction for the transfer of engines, cars, and trains of cars.

Fourth. To construct, establish, or purchase, in the State of Louisiana, and thereafter to own, maintain, and use, suitable wharves, piers, warehouses, steamboats, harbors, depots, and

other works and appurtenances, connected with, and incidental to, said railroad and the business of said company, and by the directors of said company deemed necessary and expedient for said company to own or manage.

Fifth. To take, transport, carry, and convey, persons and property, upon its said railroad, and its boats, by power of steam, or any other power, and to receive for the same such tolls and charges as shall be established by the directors of said company.

Sixth. To obtain and receive by purchase, grant, gift, devise, and bequest, and to have and to hold real and personal estate in the State of Louisiana, for the objects, purposes, and business of said company, and to extent provided and set forth in its said act of incorporation and in this act, excepting that in the taking and holding lands for the use of said company, as lands taken for public use, the said company shall take and obtain the same as in this act provided.

Seventh. To lay out its said railroads and to construct the same not exceeding two hundred feet in width upon any lands of the State of Louisiana, and to take, hold and use for the purpose of necessary depots, stations, cuttings, turnouts, and for obtaining stone, gravel, earth, and timber for the construction of its said railroad, any lands of the State of Louisiana lying along or upon or adjacent to the route or course of said railroad that may be necessary for the construction, maintenance, and security of said railroad: provided, however, that any and all damages that may be occasioned or that may arise to any person, corporation, or association, other than the State of Louisiana, by the taking and using of such lands and material for the use of said company as aforesaid, shall be assessed and paid for by said company, as provided in this act.

Eighth. To construct its said railroad or any part of the same, and to have the right of way therefor across or along or upon any waters, water course, river, lake, bay, inlet, street, highway, turnpike, or canal within the State of Louisiana, which the course of said railroad may intersect, touch, or cross, provided the said company shall preserve any water course, street, highway, turnpike, or canal, which its said railroad may so pass upon, along, intersect, touch, or cross, so as not to impair its usefulness to the public unnecessarily, or if temporarily impaired in and during the construction of said railroad, the said company shall restore the same to its former state, or to such a state that its usefulness and convenience to the public shall not be unnecessarily impaired or materially impaired or injured; and it is also provided that said company is authorized and empowered to construct and maintain its said railroad over and across the waters of the State of Louisiana, known as the Pass Chef-Menteur, Little Rigolet, or Great Rigolet,

that part of Lake Pontchartrain east of the west line of Point aux Herbes and the West Pearl river and other streams and bayous between Lake Pontchartrain and Pearl river, and Pearl river, by bridges; provided, however, that in the channel of that part of Lake Pontchartrain hereinbefore named there shall be constructed and maintained by said company a draw-bridge, which when open shall give a clear space for the passage of vessels of not less than one hundred feet in width, and in the channel of the Pearl river the said company shall construct and maintain a
552 drawbridge, which, when open, shall give clear space for the passage of vessels of not less than sixty feet in width, except in case the company shall locate their road across the Great Rigolet at a point south of (or below) the principal entrance of Pearl river into the Great Rigolet, when the company shall only be required to construct one drawbridge which shall be in the channel of the Great Rigolet, as hereinbefore named; and said company after the construction of the said drawbridges or drawbridge shall at all times thereafter provide that said drawbridges or drawbridge shall be opened for the passage of any and all vessels seeking to pass through the same without unnecessary delay. It is also provided that such part of this section as relates to Pearl river, if the line of the road shall be located across the said river at a point where it constitutes the boundary line between the State of Louisiana and the State of Mississippi has consented to, and authorized the same, or said com-
553 pany has built such a bridge across said Pearl river for its said railroad as shall be in accordance with this section, and also with any authority or power granted to said company by the State of Mississippi in the premises, and such drawbridge may be built in the centre of the channel of said Pearl river, or in that portion of the same within the territory of the State of Mississippi or of this State as most convenient for public use.

Ninth. That the said company is hereby authorized and empowered to obtain, by grant or otherwise, from any incorporated city or village within the State of Louisiana that may be situated upon its railroad, any rights, privileges, or franchises that any of said incorporated cities or villages may choose to grant in reference to the construction, maintenance, and management of the railroad of said company, its depots, cars, locomotives, and its business within the limits of such, or any of said incorporated cities and villages; and any such incorporated city or village as hereinbefore named is hereby authorized and empowered
554 to grant to said company any such rights, privileges, and franchises as it may deem proper and advisable; and such rights, privileges, and franchises, when granted to and accepted by said company from any such incorporated city or village, shall be deemed and taken as rights, privileges, and franchises vested and confirmed in said company, and not liable to be hereafter

revoked, changed, injured, or impaired, except with the consent of said company; and the rights, privileges, and franchises which have been heretofore granted to said company by the city of New Orleans, are hereby recognized, approved, and vested and confirmed in said company, subject to all the benefits and provisions of this act.

SEC. 3. Be it further enacted, etc., That said company, being hereby authorized to purchase, receive, and hold such real estate as may be necessary and convenient in accomplishing the object for which said company is organized, it may, by its agents, surveyors, engineers, and servants, enter upon all lands and tenements through which it may conclude to make such rail-
555 roads, and survey, lay out, and construct the same, and may agree and contract for the land or right of way with the owners of the land through which it intends to make such roads. In case said lands belong to the estate of any deceased person then with the executor or administrator of such, or in case of the same belonging to a minor or a person *non compos mentis*, then with his or her guardian or tutor, or in case said lands be held by trustees of school sections, or other trustees of estates, then with such trustees. And said executors, administrators, tutors, guardians and trustees are hereby declared competent for such estate, person or minor, to contract with said company to use, occupy and possess the lands of such estates, persons, minors or trustees, so far as may be useful or necessary for the purposes of said railroad, and the act and deed of such executors, administrators, tutors, guardians or trustees in relation thereto, shall pass a title in such lands in the same manner as if the said deed or act
556 was made or done by a legal owner, of full age and sound mind; and such executor, administrator, tutor, guardian or trustee shall account to those interested in their respective bonds for the amount paid him in pursuance of such agreement and composition; and if the said company and the parties representing lands prefer, they may refer the question of compensation to arbitrators, mutually chosen, whose award, or that of their umpire, (in case of disagreement,) shall vest title according to its terms.

SEC. 4. Be it further enacted, etc., That if said company is unable to agree for the purchase of any real estate, or the right of way thereupon, or any estate therein required for the use and purposes of said company, as provided in the preceding section, or is unable to obtain the title or right of way therein, it shall have the right to acquire title of the same in the following manner: The said company may apply to the district court of the parish in which the land, the title wherein is sought, is situated, for the appointment of commissioners of appeal, at any
557 general or special term, or to any judge thereof in vacation; such application shall be made in writing and signed

by the president or one of the directors of said company, or by an agent or attorney of said company authorized for that purpose, and shall substantially set forth and state:

First. It must be entitled so as to describe the court wherein or the judge to whom the application is made, and the character of the application.

Second. The name and official character of the person applying in behalf of the company must be stated.

Third. The real estate which the company seeks to acquire must be described by metes and bounds, and the estate therein which the company seeks to acquire must be set forth; and several parcels of land owned by different persons may be included in one application.

Fourth. That the company has not been able to acquire the estate in said lands required, and the reason of such inability.

Fifth. The names of all owners or parties interested in said real estate, so far as the same are known to the applicant, must be first set forth, and if not known, that fact
558 must be stated. A copy of such application and notice of the time and place the same will be presented must be served on all persons named in said application, as owners or interested in said real estate, at least ten days prior to the presentation of the same; provided such owners so named are residents, and can be found within the State of Louisiana, and are not infants, idiots, or persons of unsound minds; in that case, upon their tutors, curators, or guardians.

SEC. 5. Be it further enacted, etc., That on presentation of the application to the court or judge therein named, and no person appearing to oppose said application, and whenever it shall satisfactorily appear from said application and proofs thereunto attached that service of notice of the time and place of the presentation of said application upon all the owners and persons interested in said land has been made, the said court, or the judge thereof, shall forthwith make an order appointing three disinterested and competent freeholders who reside in the parish where the premises
559 are situated, or an adjoining parish thereto, as commissioner to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate proposed to be taken by the said company for its purposes, and shall fix the time and place for the first meeting of said commissioners. In case any person who shall be the owner, or who shall have a vested interest in said premises, shall appear at the time and place of the presentation of such application the said court or judge, before making said appointment of commissioners, may hear such person and said company in relation to any persons proposed for appointment, as such commissioners, their place of residence, their competency and interest, and after such hearing,

the said court or judge shall make an appointment of three commissioners, as aforesaid, in accordance with the discretion and judgment of said court or judge. In case it shall appear by said application that any person, or any of the persons owning or interested in the said premises described in the application, or any part of the same, are not known to the said company, or are not residents of the parish wherein said real estate is situated, or cannot be found therein after due diligence, or are infants, idiots, or persons of unsound mind, then and in such case the said court or judge before making such appointment of commissioners, shall make such inquiries as to such owners and parties interested in said premises, and shall make such orders for service of notice upon them, or upon any persons in regard to said application, and such other order or orders in the premises as the said court or judge may deem necessary, proper, and just; and shall then make such appointment of commissioners as aforesaid, and in connection therewith make such orders as to the service of any future notice upon the owners of said premises, of the meeting and appraisement of said commismissioners, and the confirmation of the same, as may seem to said court or judge equitable and just.

SEC. 6. Be it further enacted, etc., That the commissioners so appointed, or a majority of them, shall hold their first meeting at a time and place appointed by the court or judge, and may adjourn from time to time at their discretion. They shall take and subscribe an oath before any officer authorized to administer oaths in the State of Louisiana, to the effect that they and each of them will impartially, and to the best of their judgment and ability, perform the duties of said commissioner; and any one of said commissioners may issue subpœnas and administer oaths to witnesses. Whenever they meet to take testimony or hear the parties, except by the appointment of said court or judge, or pursuant to adjournment, they shall cause reasonable notice of such meeting to be given to any of the parties in interest, who shall have therefore appeared before them, or to their agent or attorney. They shall hear the proofs and allegations of the parties, and reduce the same to writing, and after all the testimony offered in the case that, in the judgment of said commissioners is pertinent to the value of said premises, is taken, they, or a majority of them, shall, without any unnecessary delay, ascertain and determine the compensation which ought, justly and equitably, to be made by the said company to the owners or persons interested in said real estate appraised by them; and said commissioners shall take into consideration the advantages that the said owners or persons interested in said real estate may derive from the construction of said proposed railroad for which said real estate is proposed to be taken. They shall make a report in writing to the court or

judge by whom they were appointed, which shall contain the proceedings in the cases before them, with the minutes of the testimony taken by them, if any, and their award and determination. They shall be compensated for services as such commissioners by the said company at the rate of five dollars per day for actual service.

SEC. 7. Be it further enacted, etc., That on such report being made by said commissioners, the court or judge shall
563 appoint a time and place for the hearing of said company, and all parties interested in said lands in regard to the confirmation of said report, and shall, by order, direct the manner and form of the service of any notice of the same, upon any persons that, in the judgment of the said court or judge, should be notified; and on the day of such hearing, if no person shall appear to oppose the confirmation of said report the same shall be confirmed by the said court or judge, and an order shall be made, reciting the proceedings of the appraisal, the confirmation of the same, and a description of the real estate, and directing to whom the money or value of said real estate is to be paid, or, in what manner the same shall be deposited by said company for the use and benefit of said owners. And if any person shall appear to oppose the confirmation of said report, the said court or judge, shall hear the parties for and against such confirmation, and if said court or judge shall decide in favor of such confirmation, then the same proceedings may be had in the premises as
564 heretofore provided in case no person appeared to oppose said confirmation; and if said court or judge shall decide against such confirmation, an order shall be entered, directing said commissioners, or other commissioners, named in said order, to proceed to a re-appraisal of the said premises, the proceedings of which shall be afterward conducted as in the first instance, except that the appraisal and report of the commissioners on the re-appraisal order shall be final, and shall be confirmed by said court or judge, and the order of said court or judge, confirming any appraisal, as aforesaid, shall be final and conclusive on all parties interested. Provided, That any party to said decree shall have the right of appeal to the supreme court from any decree adverse to their interests or the interests of those they may represent.

SEC. 8. Be it further enacted, etc., That the order of the said court or judge, confirming an appraisal of lands, as heretofore provided, or a certified copy of the same, shall be filed in
565 the office of the clerk of the district court of the district in which the said real estate appraised shall be situate, and there shall remain a record; and such order, so entered and filed, shall vest in said company the lands described therein, and such estate as may therein be set forth, on the payment or tender of payment, or deposit of the amount of the appraisal and damages

by said company, as provided in said order, and said order, or a duly certified copy thereof, with proof of such payment and deposit, as therein provided, will be considered as legal evidence of the title and estate of said company to the real estate acquired by appraisal by said company, under and pursuant to this act, shall be deemed to be acquired for public use.

SEC. 9. Be it further enacted, etc., That the said company is hereby authorized to cross, intersect, join, and unite its railroad with any other railroad heretofore or hereafter constructed in the State of Louisiana, at any point upon its route, and upon
566 the ground of such other railroad company, with the necessary turnouts, sidings, switches, and other conveniences in furtherance of the objects of the connections, and every railroad in the State of Louisiana whose railroad shall be hereafter intersected by the railroads of this company, shall unite with it in forming such intersections and connections, and grant the facilities aforesaid, and if the said railroad companies cannot agree upon the points and manner of such crossing, intersection, and the division and apportionment of the cost and expense of the same between said companies, the same shall be ascertained and determined by commissioners appointed by the court, as provided in this act in respect to acquiring title to real estate.

SEC. 10. Be it further enacted, etc., That said company is empowered and authorized to purchase or lease from any railroad company or corporation its railroad, and the charter, franchises, property, and appurtenances thereof, and maintain and use the same as a part of said property of the company, and the said
567 company is also authorized and empowered to enter into any mutual contract with any other railroad company or corporation, by which the capital stock and property of said other company or corporation shall become merged and consolidated with the said company, and into one joint and common stock, and be and exist as one company, possessing and enjoying all the rights, powers, franchises, and privileges granted to or vested in each and all of the companies so consolidated and united by the State of Louisiana, or by other States through which the railroad of said company so consolidated and united may pass, the provisions of any statute heretofore passed by the State of Louisiana to the contrary, notwithstanding.

SEC. 11. Be it further enacted, etc., That said company is authorized and empowered, from time to time, to bororw money or to purchase property upon its own credit for the purpose of constructing and maintaining said railroads, or establishing continuous and connecting lines of railroads as heretofore,
568 and in its act of incorporation provided, and as evidence of the indebtedness of said company forsuch, or the purchase of such property, may issue its corporate bonds or promissory notes

bearing interest at a rate not to exceed eight per cent. per annum; and to secure the payment of said bonds and notes may mortgage its railroads, its capital stock, its corporate franchises, and any of its real or personal property, or any part or portion of the same; and it may, by its president or other officers or agents duly authorized by its directors, sell, dispose of, or regulate such bonds or notes, or may sell, dispose of, or negotiate its capital stock, said capital stock being declared to be personal property and transferable as such, or any of its personal property, at such times and places, and at such rates and for such prices, either within or without the limits of this State, as in the judgment of said company or its directors will best advance its interests, and if such bonds, notes, or stocks are thus sold at a
569 discount, such sale shall be in all respects valid and binding upon this company, and such stocks, bonds, or notes shall be as valid for the par value thereof as if the same had been sold at par value.

SEC. 12. Be it further enacted, etc., That the said company can sue and be sued in courts of the State of Louisiana, of competent jurisdiction, and in such manner and form only as corporations of the State of Louisiana can sue and be sued, and service of process in any action against the said company can be made only by service of the same upon either the president, the secretary, the treasurer, or any of the directors of said company, or upon the agent of the company, resident in the city of New Orleans, State of Louisiana, and designated by the company to receive such service, and it shall be the duty of the company to designate one of its agents residing in the said city of New Orleans, as the agent upon whom such service of process can be made, and to give public notice thereof by adver-
570 tisement, for four consecutive weeks, in a newspaper published in the city of New Orleans, and like public notice shall be given whenever any change is made in such agency.

SEC. 13. Be it further enacted, etc., That if any person or persons shall willfully do, or cause to be done, any act or acts whatever, whereby any building, construction, or works of said company, or any engine, machine, or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the said company double amount of damage sustained by reason of such offenses or injury, to be recovered in the name of said company, with costs of suit, by action of debt; and such offenders shall also be subject to indictment, and shall be sentenced, on conviction, at the discretion of the court, for a period not exceeding eighteen months.

SEC. 14. Be it further enacted, etc., That this act shall
571 be favorably and liberally construed, so as to favor all the

purposes and objects of the same, and the operations of the provisions thereof.

(Signed) CHAS. W. LOWELL,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

Approved August 19th, 1868.
A true copy.
(Signed) GEO. E. BOVEE,
Secretary of State.

572 No. 26 of 1869.

An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana.

Offered by defendants.

SEC. 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama, be, and it is hereby, authorized to make and issue, from time to time, as hereinafter provided, its bonds, to be known as "second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, guaranteed by the State of Louisiana," of such denominations as the company may elect, but to an amount not exceeding in
573 the aggregate twelve thousand five hundred dollars for each and every mile in length of the main line of its railroad, westerly from the city of New Orleans, and within the State of Louisiana, which said company shall construct, to wit, of the main line extending from the point where it shall intersect and cross the western boundary of the city of New Orleans westward, toward and to the point where it shall intersect and cross the western boundary of the State of Louisiana, in the parish of Calcasieu, to said main line has been located, or may be located, in conformity with the charter of said company, and in conformity with the power and authority vested in said company by the State of Louisiana, by an act of the General Assembly of the State of Louisiana, approved August 19, 1868.

SEC. 2. Be it further enacted, etc., That such bonds shall be numbered consecutively and shall be made payable to the State of Louisiana, or bearer, at such time as the company may
574 designate therein, not more than fifty years nor less than forty years from their date, and shall bear interest at such rate as the company may designate therein, not exceeding eight

per cent per annum, payable semi-annually, and coupons for such interest shall be annexed thereto. The principal or interest, or both, of said bonds may, at the option of the company, be made payable in lawful currency of the United States or in gold coin, or in English sterling, and if payable in sterling, two thousand five hundred pounds sterling per mile shall, for the purposes of this act, be deemed within the limitation of twelve thousand five hundred dollars per mile in section one of this act contained, and the place of payment of the principal and interest of said bonds, or any of them, may be either at the city of London, in England, or the city of New York, as the company may elect and designate in such bonds.

SEC. 3. Be it further enacted, etc., That the payment of
575 the principal and interest of such bonds shall be secured by a mortgage, to be executed by said company, to the Governor of the State of Louisiana, as trustee for whomsoever shall, from time to time, be holders of said bonds, and also for the State of Louisiana, and for the said company, and whomsoever shall, from time to time, be governor of said State, shall be the trustee under said mortgage, and be vested with the rights and powers conferred upon such trustee, and charged with the duties hereinafter inposed upon him. The said mortgage shall be a lien upon the whole of the said main line of railroad of said company within the State of Louisiana, and upon all the right of way, road-bed, rails, depots, stations, shops, buildings, machinery, tools, engines, cars, and real and personal estate, within the State of Louisiana, appurtenant to, or necessary for, the operation of said main line of railroad owned by the company at the date of said mortgage, or which may be acquired by it thereafter, and also upon the corporate franchises and privileges of said
576 company, granted by the State of Louisiana, relative to the construction, operation, and use of said main line of railroad within the State of Louisiana. But the lien of said mortgage shall be subject and subordinate to a prior lien, to the extent next hereinafter specified, in favor of a first mortgage, to be made by said company to secure bonds to be known as "first mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company," such first mortgage bonds, and the mortgage securing the same, shall be a prior lien only to the extent of twelve thousand five hundred dollars, payable in coin or currency, or two thousand five hundred pounds sterling, of such first mortgage bonds, and the interest which may accrue thereon, at the rate of not exceeding eight per cent. per annum, payable semi-annually, upon each and every mile of the aforesaid main line of railroad within the State of Louisiana, including all the right of way, road-beds, rails,
577 depots, stations, shops, buildings, machinery, tools, engines, cars, and real and personal estate, within the State

of Louisiana, appurtenant to, or necessary for the operation of said main line of railroad, owned by the company at the date of said mortgage, or which may be acquired by it thereafter, and of the corporate franchises and privileges of said company granted by the State of Louisiana, relative to the construction, operation, and use of said main line of railroad within the State of Louisiana; the principal of such first mortgage bonds not to be payable in less than forty nor more than fifty years from their date, unless in case of default in payment of interest thereon. And in case of a sale of said railroad, or any part thereof, for the satisfaction of said first and second mortgage bonds, or either of them, the proceeds of the rolling stock and personal property which may be sold, shall be deemed to appertain to that portion of said main line of railroad within the State of Louisiana which
578 shall have been constructed and operated, and shall be apportioned equally upon each mile thereof, and shall be deemed proceeds of the completed portion of said railroad, and the lien of said first mortgage shall be governed by the further provisions hereinafter contained.

SEC. 4. Be it further enacted, etc., That the said mortgage to the Governor of the State of Louisiana, shall describe the second mortgage bonds thereby secured, and shall also provide for the payment by the company to the trustee of a sinking fund, for the gradual redemption of the principal of the said bonds. The payments of the said sinking fund shall commence in five years from the date of said mortgage, and shall be made annually thereafter, and each payment shall not be less than one-half of one per cent. of the total amount of the principal of all the bonds which shall, up to the time of such payment, have been guaranteed by the State of Louisiana, as hereinafter provided, whether outstand-
579 ing or surrendered to the trustee for the purposes of the sinking fund, as hereinafter provided. The moneys so paid to the said trustee shall be forthwith paid by him as soon as received into the treasury of the State, and shall be paid out only on the warrant of said trustee for second mortgage bonds of said company surrendered to him; and all bonds thus surrendered and paid for shall be forthwith stamped by the trustee, "surrendered to the sinking fund and not negotiable," in some effectual manner, so that they cannot be again issued, and shall be immediately thereafter deposited in the treasury of the State, and the number and amount of each and every bond so surrendered to the sinking fund shall be entered by the trustee and by the treasurer of the State of Louisiana in books to be kept by them for that purpose, which books shall at all times be kept open to the inspection of the officers of the company. But the interest on such surrendered bonds shall be payable as it
580 accrues to the said trustee, according to the tenor of the coupons, and become part of the sinking fund, and shall

be deemed secured by said mortgage in like manner as if said surrendered bonds were still outstanding, and such payment of interest on the surrendered bonds shall continue until the sinking fund shall amount to a sufficient sum to pay all the second mortgage bonds outstanding. The trustee shall not apply said sinking fund, nor any part thereof, to the purchase of said bonds at any greater price than par and accrued interest. The mortgage securing said bonds shall contain suitable provisions for advertising for sealed proposals to the trustee to surrender bonds for the purposes of the sinking fund, and the trustees shall give the preference to the proposals most favorable to the company, provided they do not exceed par and accrued interest. If on any occasion sealed proposals are not received by the
581 trustee within the time limited by the advertisement for the requisite number of bonds within the aforesaid limit of price, to absorb the whole amount of sinking fund on hand, the trustee shall, within three days thereafter, by a certificate in writing, specify the amount of bonds so deficient, and appoint three commissioners to draw by lot the requisite amount of bonds to supply the deficiency.

The said commissioners shall forthwith after their appointment draw by lot from the numbers of all the second-mortgage bonds then outstanding, number of bonds to an amount sufficient to supply such deficiency, and shall make and sign a report specifying the numbers so drawn by them, and shall attach to their report an affidavit, sworn to by each of them before some officer of the State of Louisiana authorized to administer oaths, stating that such drawing was in all respects impartially and fairly conducted, and that said report is true.

The said certificate of the trustee and report of the commissioners shall be filed in the office of the secretary of the State
582 of Louisiana, and thereupon the holders of the bonds bearing the number so drawn by the commissioners, and specified in their report, shall be bound to surrender the same to said trustee on receiving from him his warrant on the State treasury for the amount of the principal of said bonds with the interest accrued thereupon up to the time of the expiration of the notice mentioned in section five, or such earlier time as such warrant may be delivered.

SEC. 5. Be it further enacted, etc., that immediately after the filing of said report of said commissioners, the company shall cause a notice to be published, specifying the number of the bonds so drawn, and requiring the holders thereof to surrender the same to said trustee, on or before a specified day, which shall not be less than thirty days after the first publication of said notice. Such notice shall be published in a daily newspaper in the city of New Orleans, and in at least two daily newspapers in the city of New York for four successive weeks, at least three times

583 a week, and upon the expiration of the time limited in said notice, the interest on the bonds, the numbers of which are specified in such notice, shall cease, and no interest shall accrue thereon after that time, or be payable, except to the sinking fund as hereinbefore provided, however, that if any of the bonds as drawn shall be payable in the city of London further publication of said notice shall be made for at least four consecutive weeks, at least three times in each week, in the newspapers published in the city of London, and the date specified for the delivery of such last mentioned bonds shall be at least forty-five days from the time of the first publication of the last mentioned notice, and the interest on the last mentioned bonds shall cease to accrue, (except to the sinking fund as hereinbefore provided) on the expiration of the last mentioned notice. The payment of bonds surrendered to the sinking fund, or drawn for the
584 sinking fund shall be made in currency, coin, or sterling, or their equivalent, respectively, according to the tenor of the bonds drawn or surrendered, and the annual payments to be made by the company to the trustee for the purpose of the sinking fund, shall in like manner be made in currency, coin, or sterling, or their equivalent, as the principal of said bonds shall be payable. In all cases where any payment is required by this act, or agreed by the company to be made in sterling, if such payment is reduced to currency, the premium on gold in the city of New York, and the rate of exchange on London, ruling at the time when such payment is due, shall be included, and whenever any payment so required or agreed to be made in coin is made in currency, the premium or gold ruling in New York at the time the payment is due shall be added; and in case of any decree or recovery in any court of this State upon said
585 second mortgage bonds, or any of them, or upon said mortgage, the amount due upon such of said bonds as may be payable in coin or sterling, shall be ascertained by reducing coin and sterling respectively into currency according to the foregoing rules. Whenever the term "currency" is used in this act it shall be deemed to mean obligations of the United States of America, which are, or shall be, by the laws of the United States, made a legal tender in payment of debts.

SEC. 6. Be it further enacted, etc., That the said mortgage to the Governor of the State of Louisiana, shall contain a further provision, that in case default should be made in the payment of the interest of said bonds, or any of them, or of the said sinking fund, or any part thereof, and the same shall remain in arrear for sixty days after becoming due and being demanded of the said company, the principal of all of the bonds secured by said second mortgage and then outstanding shall, upon the expiration
586 of sixty days, become due and payable, and said mortgage shall contain suitable provisions for the sale of said rail-

road appurtenances by the trustee in case of default in the conditions of said mortgage.

SEC. 7. Be it further enacted, etc., That the said mortgage shall, after its execution by the company, be delivered to the Governor of the State of Louisiana, and if the same shall be in conformity with the provisions of this act, he shall endorse his approval in writing thereon, and cause the said mortgage, thus approved, to be recorded at length in the office of the Secretary of State. Such approval by the Governor shall be conclusive as to the sufficiency of the form and execution of said mortgage, and as to its conformity to the provisions of this act, and such recording shall be constructive notice to all persons of the lien of said mortgage, and such lien shall be paramount to all other liens and incumbrances upon the mortgaged premises, except the aforesaid lien of the first mortgage to the extent of twelve thousand
587 five hundred dollars, or two thousand five hundred pounds sterling, and interest, on each and every mile of said main line of railroad within the State of Louisiana.

SEC. 8. Be it further enacted, etc., That when the said second mortgage shall have been so delivered, approved, and recorded, and one continuous portion or section of forty miles in length of the said main line of railroad within the State of Louisiana shall have been constructed by the company, and the rails laid thereon, the company may deliver to the Governor of the State of Louisiana five hundred thousand dollars, or one hundred thousand pounds sterling, of such second-mortgage bonds, and the governor shall thereupon subscribe a certificate, to be written or printed upon each of said bonds in the following words: "The payment of the principal of the within bond when due, and of the interest thereon as it accrues, is guaranteed by the State of Louisiana, pursuant to the provisions of the act of the General Assembly of said State authorizing such guarantee," and
588 shall affix the great seal of the State of Louisiana to such certificate, and the said seal shall be attested by the signature of the Secretary of State, and the bonds shall then be delivered to the company for its general uses and purposes authorized by its charter.

SEC. 9. Be it further enacted, etc., That upon the construction of each additional section or portion of forty miles in length of said main line of railroad within the State of Louisiana, the company may execute and deliver to the Governor of the State of Louisiana a further amount of such second-mortgage bonds equal to twelve thousand five hundred dollars, or two thousand five hundred pounds sterling, as the company may elect, for each and every mile in length of said main line of railroad within the State of Louisiana, so constructed (and for which bonds shall not have been previously guaranteed as herein provided,) and thereupon the said Governor shall subscribe a certificate of guarantee upon

each and every such bonds, prescribed in section eight of this act, and the same shall be sealed and attested in like manner, and shall forthwith be delivered to the company for its general
589 uses and purposes authorized by its charter; and when the whole of said main line of railroad within the State of Louisiana shall have been constructed by said company, all the residue of the second-mortgage bonds, authorized by this act, may be executed by the company, and certificates of guarantee thereon, in the form aforesaid, shall be subscribed by the governor, and sealed and attested as hereinbefore provided; and such guaranteed bonds shall forthwith be delivered to the company for its general uses and purposes authorized by its charter.

SEC. 10. Be it further enacted, etc., That the signature of the Governor to the certificate of guarantee shall be conclusive evidence in favor of the holder of every bond so certified, that the conditions of this act have been complied with on the part of the company, and that said bonds have been duly made and regularly certified and issued, pursuant to the provisions of this act; and every such certificate of guarantee, when so subscribed, shall be a valid and binding obligation of the State of Louis-
590 iana in favor of whosoever shall, from time to time, be the holder of the bond bearing such certificate, and the State of Louisiana hereby pledges its public faith and credit to the performance of such guarantee according to its terms.

SEC. 11. Be it further enacted, etc., That nothing in this act contained, shall impart or restrict the powers heretofore granted the said company to issue bonds and to mortgage its corporate property and franchises except that the said company shall not have power to make any mortgage or create any incumbrance upon its said main line of railroad within the State of Louisiana, which shall have priority over the said second mortgage to any greater extent than twelve thousand five hundred dollars in coin or currency, or two thousand five hundred pounds sterling, and the interest thereon, at a rate not exceeding eight per cent. per annum, upon each and every mile of the entiire length of said main line of railroad within the State of Louisiana; and in case of a foreclosure of any mortgage upon the said main line of railroad before the whole of the
591 said main line of railroad shall have been completed, the State of Louisiana may, through its Governor, require that that part of said main line of railroad within the State of Louisiana, which shall have been constructed, and in respect of which the State of Lousiana shall have guaranteed second mortgage bonds, be sold separately, and the proceeds of the part so sold, together with its due proportion of the proceeds of the cars, engines, and personal property of the company, shall constitute a fund upon which the first mortgage shall be a first lien, to the extent only of securing first mortgage bonds to the amount of

twelve thousand five hundred dollars in coin or currency, or two thousand five hundred pounds sterling per mile, for every mile of constructed road thus sold, with the arrearages of interest thereon; and after paying such amount of first mortgage bonds and interest out of the said fund, the surplus, or so much thereof as shall be necessary, shall be applied to the payment of the said second mortgage bonds guaranteed by the State of Louis-
592 iana, and all arrearages of interest thereon. Or in case such sale shall be made under the said second mortgage, the sale may be made subject to said first mortgage, and the portion so sold shall be released and discharged from the said first mortgage and the lien and operation thereof on the surrender by the purchaser to the trustee under said first mortgage of first mortgage bonds to the amount of twelve thousand five hundred dollars, or two thousand five hundred pounds sterling and the unpaid coupons thereunto appertaining for each and every mile of said railroad so sold, or on the payment by the purchaser to said trustee of a sum sufficient to discharge a like amount of first mortgage bonds and the coupons in arrear thereon.

SEC. 12. Be it further enacted, etc., That said company shall cause the survey and location of the whole of said main line of its railroad within the State of Louisiana, to be completed within eight months after its acceptance of this act, hereinafter provided for, and shall cause a section of at least forty continuous miles thereof to be constructed, and the rails laid thereon, within twelve
593 months after such survey and location shall have been made, and shall cause the whole of its said main line of railroad within the State of Louisiana to be constructed, and the rails laid thereon, within three years after such survey and location shall have been made; and in case of the failure of the said company to survey, locate, and construct the said main line of said railroad within the State of Louisiana, in the manner and within the time limited in this section of this act for such survey, location, and construction, the obligation of the State of Louisiana, by virtue of this act, to guarantee the second mortgage bonds of said company, (as in this act provided,) for or upon that portion of the said main line of railroad not constructed within the time limited shall cease and determine, and none of said second mortgage bonds, for or upon that portion of said main line of railroad not constructed within the time limited, shall be guaranteed by the State of Louisiana. But no failure of the company to complete said railroad shall affect or
594 forfeit the rights of said company to maintain and enjoy such portions of its railroad as it shall have completed, nor any other rights or franchises secured to said company under its charter, or by the laws of the State of Louisiana, or of any other State relating thereto.

And be it further enacted, That the rails to be laid by said

company upon the said main line of its railroad within the State of Louisiana, shall be the weight of not less than sixty pounds to the lineal yard.

SEC. 13. Be it further enacted, etc., That whereas the line of the railroad of said company, as intended to be constructed, will extend through several States, it is hereby declared, that the cars and engines, and all personal property which said company may acquire, shall for the purposes of this act and for all mortgage purposes be deemed part of the realty, and be apportioned according to the number of miles of railroad constructed and owned by the company in each State, so that the number of cars and engines and amount of personal property, which shall be deemed to belong to the portion of the company's
595 railroad constructed and lying within the limits of either of said States, shall at all times bear the same proportion to the whole number of cars, engines, and whole amount of personal property owned by the company, which the number of miles of railroad of the company, constructed and lying within such State, shall bear to the aggregate number of miles of the railroad of the company constructed in all of said States.

SEC. 14. Be it further enacted, etc., That the said company may accept the terms, conditions, and provisions of this act at any time within ninety days from the date of its passage and approval by a written acceptance signed by a majority of the directors of the company, and addressed to the Governor of the State of Louisiana, and in case of such acceptance by said company, said company shall be entitled to the benefit of the provisions of this act, and shall possess and enjoy the rights and franchises granted to said company by the State of Louisiana in this act, and heretofore, and such grants and the engagements herein made and entered into on the part of the State of Louisiana shall
596 be deemed to be, and shall be binding contracts between the State of Louisiana and the said company, not to be impaired, disturbed, or modified by subsequent legislation, except with the consent and on the petition of said company.

SEC. 15. Be it further enacted, etc., That the said company, with the consent of the owners of lands fronting upon any navigable water course,r oafter such lands have been acquired by the company by purchase, release, donation, or in any other manner, in accordance with the laws of the State of Louisiana, may erect, construct, and thereafter maintain and use wharves, warehouses, depots, or other buildings and structures in and upon the margins or upon the portion of the margins reserved to public use, of any and all navigable rivers, bayous, or water courses in the State of Louisiana whenever the same may be deemed by a majority of the directors of the company necessary and requisite for the legitimate and convenient transaction of its business. And within the limits of incorporated cities or towns the

597 mayor and a majority of the council of such city or town may authorize the construction of said wharves, warehouses, or other buildings and structures in front of all public squares or streets that may be bounded by such navigable water courses.

And be it further enacted, That the officers, agents, and servants of said company be, and they are hereby, exempted from jury duty, and from military duty, except in case of insurrection or invasion.

And be it further enacted, That the said company, for the purpose of connecting its railroad with the railroad of other companies, and with mines and manufactories within the State of Louisiana, is hereby authorized and empowered to construct, maintain, and use, by running thereon its engines and cars, such branch railroads and tracks as it may find necessary and expedient to own and use, and also to extend with two tracks, and necessary turnouts, its railroad heretofore authorized by the State of Louisiana, upon the neutral ground in Claiborne street, in the city of New Orleans, upon and along said neutral ground in Claiborne street to Toledano street in said city; thence
598 by such a course or route as shall be deemed most proper and expedient by a majority of the directors of said company, to a junction with the line of the railroad which the said company has been heretofore authorized by the State of Louisiana to construct westerly from the city of New Orleans: Provided, however, that for its crossing of the new canal in the city of New Orleans the said company shall construct and maintain a drawbridge in the same manner as has been heretofore authorized by the State of Louisiana for the crossing of Carondelet canal by the railroad of said company; and there is hereby granted to the said company the right to locate, construct, maintain, and use a passenger depot with offices and apartments suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the city of New Orleans, bounded by Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; and for the construction of a freight depot, and for other pur-
599 poses of its legitimate business, to inclose and occupy the blocks of ground, parts of streets, and portion of levee in said city, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street: Provided said company shall not inclose or occupy that part or portion of the blocks of ground within said last limits, which is the private property of individuals, until said company has acquired the title thereto; and said company shall thereafter, if requested by said city, extend the wharf in front thereof equal with the present wharf in front of the northerly corner of

the outer block within said limits, recently sold by said city and now owned by said company.

And be it further enacted, That the said company is hereby authorized and empowered to locate, construct, and build, and thereafter to own, maintain, manage, and use a railroad with one or two tracks, and suitable turnouts, from any point upon the main line of its railroad, as the same shall be hereafter located in the parish of St. Landry or Calcasieu, towards and to any point upon the line between the State of Louisiana and the State of Texas, in or south of the parish of Rapides; and all the powers, privileges, grants and franchises which have been heretofore granted to said company, and all the powers, privileges, grants and franchises which are by this act granted to said company for the construction and maintenance of its main line of railroad within the State of Louisiana, shall be and are hereby made applicable to said branch railroad, and for all the purposes of this act, the said branch railroad shall be deemed and taken to form and constitute a part of the said main line of said railroad within the State of Louisiana, in this act designated and referred to.

SEC. 16. Be it further enacted, etc., That this act shall take effect from and after its passage.

(Signed) CHAS. W. LOWELL,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved February 17, 1869.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.

(Signed) GEO. E. BOVEE,
Secretary of State.

No. 31 of 1870.

An Act relative to the New Orleans, Mobile, and Chattanooga Railroad Company, and to regulate judicial proceedings in certain cases under the charter of the said company, and the laws of this State relative thereto hereinbefore passed, and to declare and define the powers and liabilities of the said company, and to facilitate and aid by grant of bonds the construction and secure the maintenance of the railroads of the said company, within the State of Louisiana, and to appropriate certain lands in the city of New Orleans for public use, and to provide for the building of one or more branches to the main line of said railroad.

Offered by Defendants.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General As-

sembly convened, That the ordinance adopted by the city of New Orleans, bearing date the sixteenth day of February, 1867, and the fifteenth day of November, 1867, and the seventeenth day of June, 1869, relative to the contruction, use, and maintenance of the railroads and depots of the said company, and all those portions of said ordinances which provide for the opening and grading of streets in said city, and the grant of the use of the same and of other streets to the said company, for its tracks, switches, turnouts and depots, or for other purposes connected with its railroads, be and the same are hereby ratified and confirmed, and declared to be operative from their date; and the said city is hereby authorized and required to lay out, open and grade the streets mentioned in said ordinances to be opened and graded, and to fulfill the obligations and assumptions contained in the said ordinances
603 without further delay and without further authority than shall be afforded by this act. And it shall be the duty of the city authorities, within five days after demand made upon the mayor by the said company, to direct and require the city surveyor to proceed to open, grade, and fit the said streets for the purpose specified in the said ordinances, according to the conditions of the same; and in case of any neglect or refusal by the said city, the said company may apply to, and it shall be the duty of any court of competent jurisdiction to compel and enforce the completion of said work without delay. And the said company may proceed, if it prefers, to open, grade, and prepare the streets mentioned in said ordinances for the uses aforesaid; and whatever charges, cost, or expenditures that have been heretofore required or occasioned by the neglect or refusal of the said city to fulfill their obligations, assumptions, or duties under the ordinances aforesaid relative to said streets, or that
604 may be hereafter required or occasioned by the refusal or neglect after the notice aforesaid (required) by this act, may be recovered by the said company from the said city.

And be it further enacted, etc., That the said company be and is hereby authorized and empowered to locate, construct, maintain, and use for the passage of its engines and cars the tracks of its railroads (with the requisite curves to and from the same) from the levee to the line designated in the said ordinances of the city of New Orleans for the extension of Claiborne street, along and upon the portions of Elysian Fields street and intervening streets originally designated for the two central banquettes or walks in Elysian Fields street—the said banquettes being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Pontchartrain Railroad Company, in the central portion of said street; and no ordinance heretofore passed, or which may here-

after be passed by the city of New Orleans, and no
605 act of any party or parties whomsoever, and no act of any court or judge heretofore done, or which may hereafter be done, shall be of any force or validity to prevent the location, construction, maintenance, and use of the said tracks as aforesaid. And the said company is hereby authorized and empowered, without further authority than is given by this act, to remove from the said banquettes any material or structure which it may deem necessary to remove in order to construct its said tracks as aforesaid; provided said company shall not materially impair the drainage of said street.

SEC. 2. Be it further enacted, etc., That the said company, its officers or employees, shall not in any case be liable for any debts contracted or liabilities incurred by any person or persons who shall have contracted, or who shall contract, with it to construct any portion of its road, its buildings or appurtenances, or its rolling stock, or to furnish any materials or labor to be used for such construction, or for its maintenance and operation;
606 nor shall said company, its officers or employees, in any case be liable for any injury to person or property, or loss of life, which shall be caused by any act or omission of any person or persons so contracting with it, or of any of his or their employees or agents. But the said company may, at its option, at all times, when moneys shall become due to any contractor or contractors for the construction of any portion of its railroad, or of any permanent structure or structures, upon the line thereof or connected therewith, retain out of such moneys a sufficient amount to pay in full, or any sum or sums then due to an employee, or any of the employees, whom it shall elect to pay, of such contractor or contractors, for labor performed upon such work, or to any person or persons for materials furnished to any such contractor or contractors, to be used in the performance of his or their contract or contracts, and may pay the same to such employee or employees, or person or persons, and, when so made, such payment shall be a legal discharge to the account
607 thereof of the indebtedness of said company to such contractor or contractors: Provided, however, That such payment shall be made within thirty days after such moneys shall become due from said company; and, if not so made, such contractor or contractors shall then and from thenceforth be entitled to the same. No assignment, mortgage, or other act of any such contractor or contractors, made or done either before or after such moneys shall so have become due him or them, shall be of any validity to interfere with or prevent the retaining and payment of any such sum or sums of money, or deprive such payment of the legal effect herein above declared; and no attachment, execution, trustee process, garnishment, injunction, order, notice, or legal proceeding made, obtained, issued, or taken after the passage

of this act, in behalf of any party or parties whomsoever, shall create a lien upon, or bind, or hinder, or stay the payment of any moneys due or to become due from the said company to any
person or persons, corporation or corporations whomso-
608 ever, or whatever, for any service rendered, labor performed, or materials or supplies furnished for the construction, maintenance, or operation of the railroad of said company, or any structure or structures, or fencing upon the line thereof, but all payments on any such account or accounts may be made by said company, at its option, free from any legal obstruction or hindrance, directly to the party or parties with whom said company shall have had the dealing out of which such payments shall have become due.

SEC. 3. Be it further enacted, etc., That said company, its officers, or employees, shall not be liable in any sum whatsoever of damages or costs in any action brought by any party against it, or them, or any or either of them, for any injury to the person or loss of life or injury to, or detention or loss of baggage caused by any accident, or alleged carelessness or negligence on the part of said company, its officers, or employees, and sustained by any
person while riding or being transferred free of charge
609 upon its railroads, or any part thereof, or upon any other railroad or transportation line occupied and operated by said company, or while the person whose death or personal injury shall have been caused by any such accident or alleged carelessness or negligence shall have been at work or rendering any service as an employee of said company, or as an employee of any person or persons with whom said company may have contracted for such work or service, upon or in connection with its railroads, or any other railroad or transportation line occupied and operated by it, and all such free passengers shall travel, and all such employees shall labor and render service upon said railroad, and upon all other railroads and transportation lines occupied and operated by said company, at their own risk as to personal injury or loss of life, or loss or detention of or injury to baggage, resulting from accident or alleged carelessness or negligence on the part
of said company, its officers, or employees; and the said
610 company shall not be subject to any liability to any party for any such personal injury or loss of life.

And be it further enacted, etc., That no distinction or discrimination shall be made by the New Orleans, Mobile, and Chattanooga Railroad Company, on account of race, color, or previous condition between the persons employed in the construction and maintenance of their railroad, or between passengers, either in their railway carriages, in their depot buildings, or upon their ferry-boats within this State.

SEC. 4. Be it further enacted, etc., That the said company be, and it hereby is, authorized to issue bonds and make contracts,

payable in the gold coin of the United States or of any foreign country, in all cases in which it shall elect to do so; and the provisions of its charter shall apply to all such bonds and contracts so made, as if the same had been made payable in the lawful currency of the United States.

611 And be it further enacted, etc., That any bridge which shall be constructed by the said company upon the located line of its railroad west of the Mississippi river, over and across the Bayou Lafourche or the Little Tensas bayou, shall have a well constructed and suitable draw therein, which, when open, shall give a clear space of not less than eighty feet for the passage of vessels; and the said company shall at all times open the said draw for the passage of all vessels requiring the same, except during and for ten minutes prior to and after the time of the passage of the mail and passenger trains of said company; and the said company shall not be required to construct a draw in any bridge over and across any other stream or bayou on the line of its railroad between the Mississippi river and the State of Louisiana, in the direction of Houston, in Texas, except that the requirements of commerce shall demand a draw at its crossing of the Calcasieu;

612 And be it further enacted, etc., That there be and is hereby granted to the said company the right to locate, construct, maintain, and use a ferry landing for its ferry for the transportation of passengers, property, its locomotives, and cars across the Mississippi river at and upon the wharf and batture rights owned by said company at and below Calliope street, in the city of New Orleans, or at or upon any wharf and batture rights in the city of New Orleans above Calliope street, or in the city of Jefferson or in Carrollton, which may be acquired by the said company for such purpose; and such ferry landing and the wharf and batture requisite therefor, when so located and constructed by the said company, shall not be used for any other purpose than for such ferry by any party or parties whomsoever without the consent of the said company.

And be it further enacted, etc., That there be, and is hereby, granted to the said company the right to locate, construct,

613 maintain, and use a passenger depot not exceeding five hundred feet in length, with offices and apartments suitable for its legitimate business, and with the requisite tracks and turnouts, upon any part of the neutral ground in the central portion of Claiborne street, between St. Louis street and Canal street, or between Canal street and Lafayette street, whenever the directors of the said company shall deem such passenger depot requisite and necessary for the interest of the said company.

And be it further enacted, etc., That the said company be, and is hereby, empowered and authorized to locate, construct, and

build, and thereafter to own, maintain, manage, and use a railroad, with one or more tracks and suitable turnouts, from any point upon the main line of its railroad, as the same has been, or may be hereafter, located in the parish of St. Martin, or in the parish of Lafayette, northwesterly, on such a course or
614 route as the directors of the said company may deem expedient, and for the interest of said company to adopt towards and to Shreveport, in the parish of Cadda, via Alexandria, (or some point near Alexandria,) in the parish of Rapides, and also a railroad with one or more tracks and suitable turnouts from any point upon its main line of railroad, as the same has been, or may be hereafter, located in the parish of Iberville northerly or northwesterly, as the directors of said company may deem most expedient, and for the interest of said company to adopt toward and to any point on the Mississippi river, in the parish of West Baton Rouge, and all the powers, privileges, grants, guarantees, and franchises, which have been heretofore granted, or which are by this act granted to said company for the construction, maintenance, and use of its main line of railroad within the State of Louisiana, westerly from the city of New Orleans, shall be, and are hereby, made applicable to the said lines of
615 railroad to Shreveport, and to the said point in the parish of West Baton Rouge.

Provided, however, that such of the provisions of the act entitled, "An act to expedite the construction of the New Orleans, Mobile, and Chattanooga Railroad Company in the State of Louisiana," approved February 17, 1869, as relate to the guarantee of the second mortgage bonds, of said company, shall be applicable only to such parts or portions of the said lines of railroad to Shreveport and to said point in the parish of West Baton Rouge, as shall be surveyed, located, and constructed within five years from and after the acceptance of this act by said company; and the said provisions of said act, shall be applicable to such parts or portions of the said last mentioned lines of road as shall be surveyed, located, and constructed within the time last aforesaid.

SEC. 5. Be it further enacted, etc., That the grant made
616 to the said company in and by the act entitled: "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company, in the State of Louisiana," approved February 17, 1869, of the right to locate, construct, maintain, and use a passenger depot, with offices and apartments suitable for its legitimate business upon that part or portion of the levee, or streets, and grounds in the city of New Orleans, bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot and for other purposes of its legitimate business, to enclose and occupy the blocks

of ground, parts of streets, and portions of levee, in said city, bounded by Girod, Water, and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street: provided, said company shall not inclose or occupy that part or portion of the blocks of ground within said last named limits
617 which is the private property of individuals, until said company has acquired the title thereto, "be and the same is hereby confirmed, and is declared to be and is and shall be in exclusion of any and all claim or claims on the part of the city of New Orleans, to the possession, occupancy, use or disposition of or control over the said premises, or any part thereof, and for all compensation therefor. And the mayor and common council of said city, and all the municipal authorities thereof, are hereby prohibited from, and declared incapable of passing any ordinance, or doing or authorizing any act interfering with the said grant, or in any way obstructing the enjoyment thereof by the said company, or of any benefits or advantages to be derived therefrom. And all ordinances heretofore passed or which shall hereafter be passed, and any act done or to be done by said mayor and common council, purporting or intended to convey or grant to any
618 party or parties other than the said New Orleans, Mobile and Chattanooga Railroad Company, the right to possess, use, and enjoy, or to dispose of, or exercise any control over the said premises hereinabove mentioned and described, or any part thereof, are hereby declared, and shall be treated and held to be utterly null and void to all intents and purposes. And all persons are forbidden to enter upon or interfere with the said premises, or any portion thereof, under any such pretended ordinance, and all such acts are hereby declared trespass, and all persons who shall commit them, or any of them, shall be held to be and may be proceeded against as wrong-doers.

SEC. 6. Be it further enacted, etc., That all that portion of the levee or streets and grounds in the city of New Orleans, lying within the following named limits or boundaries, viz:

The southerly (or upper) line of Canal street, from the Mississippi river to the easterly line of Water street, the easterly
619 line of Water street from the southerly line of Canal street, to the southerly (or upper) line of Girod street, the southerly line of Girod street, from the easterly line of Water street, to the easterly line of the lands designated for the location of the freight depot of the New Orleans, Mobile and Chattanooga Railroad Company, the easterly line of said depot lands, from the southerly line of Girod street to the northerly (or lower) line of the batture rights, owned by said company, the northerly (or lower) line of said batture rights, from said depot lands to the Mississippi river, and the Mississippi river from the northerly (or lower) line of said batture rights to the southerly line of Canal street, is hereby expressly dedicated to public use, and shall for-

ever remain open for such use, and to part of said lands; or, if the accretions and wharf in front of the same, shall ever be enclosed, or built upon or granted for ferry landings or
620 exclusively appropriated or used by any individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans; provided, however, that the said company may construct, maintain and use, across or upon said lands, or any part thereof, its railroad tracts, turnouts, and switches, from the main tracts on Water street, as may be necessary for purposes of ingress to or egress from its depots; and the said city of New Orleans, and the mayor and common council and all the municipal authorities thereof, are hereby expressly prohibited from passing any ordinance, making any grant, entering into any contract, or doing any act, inconsistent with the provisions of this section of this act, or which shall prevent or hinder the laying of the tracts of the railroad of the said, The New Orleans, Mobile and Chattanooga Railroad Company within the corporate limits of the city
621 of New Orleans, upon the lines or routes heretofore authorized by the State of Louisiana, and which have been surveyed and located therefor, or which have been designated upon the maps of such tracks filed by said company, or which may be hereafter surveyed and located therefor, in or upon the streets of the said city, or in or upon any other lands in the said city, or which shall obstruct, disturb, or interfere with such tracks or with the full, free, and perfect enjoyment and use thereof by the said company when laid upon such routes and lines, and any and all ordinances, grants, contracts, or acts in violation thereof heretofore passed, made, entered into, or done, or hereafter to be passed, made, entered into, or done, by the said city of New Orleans, or the mayor and common council or the municipal authorities thereof, are hereby declared illegal, null and void, and the same shall be so treated and held in all places and under all circumstances.

622 SEC. 7. Be it further enacted, etc., That in order to invite immigration to this State, extend the cultivation, and increase the products of that part of its territory lying west of the Mississippi river, augment the commerce and the growth of the city of New Orleans, and promote the general prosperity of the people of this Commonwealth, it is of vital importance that the said railroad, the New Orleans, Mobile and Chattanooga Railroad Company be extended westerly from the city of New Orleans, in this State, to the city of Houston, in the State of Texas, and that the same be constructed and put in operation, the said city, within the shortest practicable time, and that to induce the said company to so extend its said railroad, and incur the inconvenient and increased cost of a speedy construction of the same, and to insure its construction and opening for tariff

623 between said —— of New Orleans and Houston, within the time hereinafter specified, this State doth grant and will pay and deliver unto the said company the bonds of the State to the amount of three million of dollars, the same to be made and delivered at the times, upon the terms and conditions, and in the manner hereinafter provided, all of such bonds shall be signed by the Governor and countersigned by the secretary of the State and sealed with the seal of this State: Provided, that all fees for affixing the seal of State shall be paid by the company; said bonds of such denominations as said company shall elect, shall be numbered consecutively and registered in the books of the auditor and treasurer, and payable to the said company or bearer in forty years from their date, with interest at the rate of eight
624 per cent. per annum, payable semi-annually, on the first days of January and July of each year, in the city of New York, for which interest coupons shall be attached to the said bonds, each of which coupons shall have at the end thereof a *fac simile* of the signature of the treasurer of this State, as such, and be stamped with the number of the bond to which it shall be attached, and the Governor is hereby authorized, directed, and required to procure such bonds and coupons to be engraved and printed, and to sign and seal the same, and cause the same to be countersigned and registered as aforesaid, and to pay and deliver the same to the said company, as and when the said company shall become entitled thereunto, as in this section of this act provided, the secretary of State is hereby directed and required to countersign the said bonds, and the auditor and treasurer to register them
625 whenever directed by the Governor. In case the said company shall within ninety days from the passage of this act file in the secretary of State's office the evidence of its acceptance of the provisions of this act, and agreement on its part to perform such acts and conditions as are herein contained, and in the manner hereinafter provided, then and thereafter the said bonds shall be delivered by the Governor to said company by installments, as follows, viz.: Whenever the said company shall have constructed its railroad from a point on the right bank of the Mississippi river, opposite either of the cities of New Orleans, Jefferson, or Carrollton, to the Bayou Lafourche, at or near Donaldsonville, in the parish of Ascension, the amount of seven hundred and fifty thousand dollars ($750,000); whenever the said company shall have constructed its railroad from the last-named point to a point at or near Vermillionville, in the parish of Lafayette, the further amount of seven hundred and fifty thousand dollars ($750,000); whenever the said company shall have constructed its railroad from the last-named point to the Sabine river,
626 the further amount of seven hundred and fifty thousand dollars ($750,000); and wherever the said company shall have constructed its railroad from the said last-named point to a point

at or near the city of Houston, in the State of Texas, the further and remaining amount of seven hundred and fifty thousand dollars ($750,000); and the Governor is hereby authorized and required, as soon as may be after the said company shall have filed in the secretary of the State's office, as hereinafter provived, the evidence of its acceptance of and its agreeement to perform on its part the provisions of this act, to appoint three commissioners whose duty shall be, when required by him, after notice from said company that it has performed the work required by this act to be done to entile it to payment of any of the installments herein provided for to examine the said work, and to report the condition thereof to the Governor forthwith; and if it shall appear to the Governor that said company has complied with the
627 requirements of this act in relation thereto, he shall forthwith pay and deliver to the treasurer of said company the amount of such installment, taking the receipt of said treasurer therefor, which receipt the Governor shall immediately file in the office of the State treasurer.

But this is hereby made to the said company upon its express agreement made and entered into by the vote of its board of directors, attested and filed, as hereinafter provided, that the said company will construct the portion of its said railroad to be constructed between the Mississippi river, opposite the city of New Orleans, or the city of Jefferson, or Carrollton, and the Sabine river, in the direction of Houston, and open same for a traffic within three years from and after the filing of said agreement on the part of said company, and that it will in like manner construct that portion of its said railroad to be constructed between the Sabine river and the city of Houston within six months from and after the time so as aforesaid designated, for the construction and opening for traffic of said first mentioned portion
628 of said railroad, provided that the Legislature of the State of Texas shall, in sufficient time for such construction thereof, make such provisions as the said company shall deem sufficient to warrant the construction of its said railroad from Sabine river to the city of Houston, within the time herein last aforesaid. And in the event that the said company shall fail to construct its said railroad from the Mississippi river, opposite the city of New Orleans, or the city of Jefferson, or Carrollton, to the said Sabine river, within the time and in the manner aforesaid, then the said company shall not receive any further issue or installment of said bonds, and shall be bound to return to the treasurer of this State to be cancelled (and all of which shall be immediately cancelled by him on such return) all bonds which shall have been issued to said company under the authority of this section of this act, and which at the time of such failure shall be owned or held by the said company, and to pay into the treasury of this State such a sum as

the bonds which shall have been received and disposed of by said company shall have been sold for, whether payment therefor
629 shall have been received by said company in money, labor, materials, rolling stock, or other valuable consideration. And annually, from and after the issuing of any portion of said bonds, there shall be imposed, for each fiscal year, a State tax of one mill on each dollar of the valuation, for each year, of all the real and personal property in this State subject to taxation, which tax shall be assessed, levied, and collected in current moneys by the annual assessment and collection of taxes for each year, in the manner prescribed by law for the collection of other taxes; and the moneys derived therefrom shall, immediately on collection, to be paid into the treasury of this State as a distinct fund, and kept as a separate account; and such moneys, and all moneys received from said company as hereinbefore provided, shall be applied, in each and every year, first to the payment of the interest as it shall accrue on said bonds, and the balance in each year shall be applied to the purchase of said bonds; and such tax shall continue to be so assessed, levied and col-
630 lected, in each and every year, until all the interest and principal of said bonds, which shall from time to time, remain outstanding, shall be fully paid, and all bonds and coupons so purchased and paid shall be immediately canceled by the said treasurer.

And any failure to complete the said railroad from the boundary line between this State and the State of Texas to the city of Houston, resulting from the cause hereinabove specified, shall not release this State from the obligation of the contract hereby entered into with said company, or any part thereof, provided the said company shall construct its said railroad from the west bank of the Mississippi river, opposite the city of New Orleans, or the city of Jefferson or Carrollton, to the Sabine river, within the time and the manner hereinabove specified therefor, except that the State shall be under no obligation to issue and deliver said last installment of bonds hereinabove provided, to be paid to said company on the construction of said road from the Sabine river to Houston.

And any temporary failure, not intentional, on the part
631 of the said company, its successors, or assigns, to maintain or keep in efficient operation the said portion of the said railroad of said company, which shall be so constructed within the time and in the manner herein above specified, in compliance with said conditions, shall not be considered a breach of said conditions, or deprive the said company, its successors or assigns, of the benefit of any of the provisions (of) (in) this section of this act contained, or impair the force and obligation of the same as a contract forever binding on this State.

SEC. 8. Be it further enacted, etc., That all laws or parts of

laws heretofore passed inconsistent with this act are hereby repealed so far only as they are in conflict with the provisions of this act; but no law, or part, or provision of any law not in conflict with this act shall be repealed by the effect of this clause upon other parts or provisions of the same law. That this act shall take effect as a law from and after its passage, and that the said company make its provisions, and the provisions of
632 the acts heretofore passed by the State of Louisiana, securing rights and franchises to the said company, binding contracts between the said State and the said company, by filing in the office of the Secretary of State for the State of Louisiana, within ninety days from the date of the passage and approval of this act, a written acceptance of and agreement to perform the provisions of this act, signed by a majority of directors of said company, and when so accepted, the rights and franchises granted by this act, and all rights and franchises so heretofore granted by the State of Louisiana, shall be deemed to be (and shall be) binding contracts between the State of Louisiana and the said company, and shall not be impaired, disturbed, or modified by subsequent legislation, except with the consent and on the petition of said company.

(Signed) MORTIMER CARR,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved February 21, 1870.

(Signed) H. C. WARMOTH,
633 *Governor of the State of Louisiana.*

A true copy.

(Signed) GEO. E. BOVEE,
Secretary of State.

Joint Resolution No. 94.

To authorize the New Orleans, Mobile and Chattanooga Railroad Company to change the name of said corporation, and to regulate its contracts, obligations, and securities under this name.

Offered by Defendants.

Be it resolved by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the said corporation shall be authorized to change its corporate name from the New Orleans, Mobile and Chattanooga Railroad Company to the New Orleans, Mobile and Texas Railroad Company, and by that name the corporation shall be known and called; and all obligations, contracts, and conveyances made, or hereafter to be made, with or by the said corporation shall

634 be equally operative for and against the said corporation by the name hereby authorized as if made under the name mentioned in the act of incorporation; and that the bonds to be issued by the said corporation, under an act entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana," approved February 17, 1869, may be issued by the said corporation by its new name, and may be endorsed and guaranteed whenever the said corporation shall, from time to time, complete ten miles of its road in the manner provided for in the act aforementioned; and all of the mortgages and securities mentioned in the said act, or which have been made in any other act, shall have the same force and obligation as before the changes herein and hereby made; and bonds may be issued by said corporation in its new name under mortgages which have been made in the name mentioned in the act of incorporation.

Be it further resolved, etc., That the draw authorized
635 to be placed in the Little Tensas be changed to the Atchafalaya river.

Be it further resolved, etc., That this resolution shall take effect from and after its passage.

(Signed) GEO. W. CARTER,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved April 18, 1871.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.

(Signed) GEO. E. BOVEE,
Secretary of State.

636 UNITED STATES OF AMERICA, } *ss.*
Eastern District of Louisiana, }

I, F. A. Woolfley, special examiner duly appointed by consent of both parties in the said cause to take testimony on the part of the defendant, (the Louisville and Nashville Railroad Company,) do hereby certify that on the day named in the proceedings hereto annexed, I was attended by the said counsel, and that the following records and testimony were introduced in evidence on behalf of said defendant, viz.:

Record of suit No. 19 of the docket of the eighth district court for the parish of Orleans.

The decree of the supreme court of the State of Louisiana, in the case No. 3692, reported in the 26th Annual Reports, pages 317, 529.

The decree of the United States circuit, in case No. 7972, New

Orleans, Mobile and Texas Railroad Company *vs.* City of New Orleans, now No. 17 of the docket of the Supreme Court of the United States.

637 Ordinances of the city, No. 7483 and No. 6824.

Depositions of R. W. Rogers and E. E. Goddin.

Agreement as to record No. 17 of Supreme Court of the United States, formerly No. 144.

City charter of 1870.

City charter of 1852, and act No. 20 of 1882 containing said charter.

Act No. 81 of 1882.

Act No. 28 of 1868, chartering the New Orleans, Mobile and Chattanooga railroad, with the act of the State of Alabama.

Act No. 26 of 1869.

Act No. 31 of 1870.

Act No. 94 of 1871.

Ordinance of the city of New Orleans No. 1755, old series, page 96, Jewell's Digest.

638 Ordinance of the city of New Orleans, June 17th, 1869, relative to the New Orleans, Mobile, and Chattanooga Railroad Company, with acceptance of same by said Company, June 24th, 1869, and notice of same to mayor, June 26th, 1869.

Sections 70 to 75, pages 404, 405, Jewell's Digest, Ordinance No. 7009.

Extract of ordinances of the city of New Orleans, relating to the issuance of old consolidated bonds.

Act No. 81 of the Legislature of Louisiana, of 1882.

Section 8 of act No. 20 of the Legislature of Louisiana, 1882.

Opinion of the Supreme Court of the United States in the city of New Orleans, Appellant, *vs.* The New Orleans, Mobile, and Texas Railroad Company, No. 17, October Term, 1882, marked Stipulation, Exhibit 1.

Admission Harrison's testimony as to amount collected by the city for ground rents.

639 Ordinance of the city of New Orleans, No. 7083.

Act No. 68 of the Legislature of Louisiana, of 1882.

Resolution of the city council, August 1st, 1882.

Ordinance of the city of New Orleans, No. 7978.

Opinion of C. F. Buck, city attorney.

Ordinances of the city of New Orleans, Nos. 8061, 8088, 8127, 7282, 7484.

Testimony of E. A. Deslonde and J. T. Harahan.

Ordinance of the city of New Orleans, of February 16th, 1867, and August 19, 1868, in relation to the New Orleans, Mobile, and Chattanooga Railroad Company.

Charter by the State of Alabama of the New Orleans, Mobile, and Chattanooga Railroad Company.

Ordinances of the city of New Orleans, Nos. 6015, 6021.

Resolution of the Board of Liquidation, November 19th, 1882, with affidavit of E. A. Palfrey, marked Exhibit "O."

Stipulation, Exhibit 2.

Request of city attorney to dismiss the appeal in the case of the City of New Orleans *vs.* New Orleans, Mobile, and Texas Railroad Company, No. 17, of the Supreme Court, October term, 1882.

(Signed) F. A. WOOLFLEY,
Special Examiner.

New Orleans, June 8th, 1883.

640 *Conclusions, etc. Filed July 2d*, 1883.

United States Circuit Court, Eastern District of Louisiana.

BOARD OF LIQUIDATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO. *et al.* } No. 10180.

The facts that control this particular case are not contested. Considering them I reach the following conclusions :

1st. It is doubtful whether the Board of Liquidation of the city debt has such corporate powers that it can plead and be impleaded by itself apart from the membership of the Board.

2d. It is also doubfutl whether the proceedings of the Board on the 9th of November, 1882, and pending thereto, claiming the $40,000 realized by the compromise, did not amount to a ratification of the compromise.

641 3d. That under the provision of the 6th section of the act 21st Feb'ry, 1870, the status of the property in controversy at the time the Board of Liquidation of the city debt was established (act 133 of 1880) was that of property "*expressly dedicated to public use*," and that from the character, location and manner of acquisition of said property, the said dedication was within the scope of legislative authority.

4th. That irrespective of the acts of 1869 and 1870, it is probable that said property by its location, ownership, actual destination and use was dedicated to public use, so to remain until the city authorities under legislative sanction should withdraw it from such use.

5th. That the two decisions rendered by the supreme court of the State, on May 4th, 1874, in the two cases between the New Orleans, Mobile and Chattanooga Railroad Company as plaintiff, and the city of New Orleans as defendant, each involving the validity of the grants of 1869 and 1870, are to be taken and

642 construed together, and as so construed constitute *res adjudicata* between the parties as to the validity of said grants.

6th. That as by said decrees the railroad company was given an injunction against the city as to said property, and as the city,

although asking therefor, was denied such injunction, the thing adjudged between the parties appears to be that the legislative grants of 1869 and 1870 in favor of the plaintiff company were valid grants within the scope of legislative authority, and the company should be undisturbed by the city in the use and occupation of the property covered by the grants.

7th. That the suit covered by the compromise and now on the docket of the Supreme Court of the United States, being one brought by the company solely for an injunction to prevent trespass *vi et armis* and for damages, was a suit that the city of New Orleans had a right to compromise irrespective of the title to the property used and occupied by the plaintiff company.

8th. That irrespective of the validity of the legislative
643 grants of 1869 and 1870, and irrespective of the question whether or not the property covered by the grants and in controversy was property dedicated to public use, the Board of Liquidation of the city debt created by the act of 1880 is without right to attack the compromise in question, because the city of New Orleans has never turned over and transferred to the board the said property, and because, as the evidence shows, the said act of 1880 has never been accepted by any creditor, no bond has ever been issued under it, and, therefore, the said act, at best, created a mere naked trust, leaving the real title and ownership of the property in the city, and leaving the board without any real interest therein.

9th. That the value of the property in 1869 or now, or the propriety of the compromise as made, can cut no figure in the present case, as the power on the part of the city council in regard to making the compromise or the terms thereof is not controllable by the court, and the complainant is without standing or
644 interest to impeach the council's action.

10th. The complainants' bill should be dismissed with costs.

July 2d, 1883.

(Signed) DON A. PARDEE,
Judge.

United States Circuit Court, Eastern District of La.

THE BOARD OF LIQUIDATION
versus
LOUISVILLE AND NASHVILLE RAILROAD CO. *et als.* } No. 10180.

Decree dismissing Bill, and Order allowing Appeal.

Entered and filed June 2d, 1883. April term. 1883. In equity.

This cause came on to be heard on the bill, answer, and evidence, and was argued; whereupon it is ordered, adjudged, and decreed that complainant's bill be dismissed with costs.

And thereupon, upon motion of complainant suggesting a desire to appeal from said decision of dismissal, it is further
645 ordered that an appeal be allowed from said decree to the Supreme Court of the United States, returnable at its next term, on a bond of five hundred dollars.

Done and signed in open court, this 2d day of July, A. D. 1883.

(Signed) DON A. PARDEE,
Judge.

Bond for Appeal. Filed July 3d, 1883.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, the Board of Liquidation of the City Debt, and Joseph H. Oglesby and Henry C. Miller, *in solido*, are held and firmly bound, jointly and severally, unto the Louisville and Nashville Railroad Company, the New Orleans, Mobile and Texas Railroad Company, and the city of New Orleans, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said The Louisville and Nashville Railroad Company, and others,
646 their heirs, executors, administrators, and assigns; for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 3d day of July, 1883.

Whereas the said Board of Liquidation of the City Debt having heretofore, to wit, on the 2d day of July, 1883, taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered on the 2d day of July, 1883, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of the Board of Liquidation of the City Debt, to the Louisville and Nashville Railroad Company *et al.*, No. —— of the docket thereof.

Now, the condition of the above obligation is: That if the above bounden The Board of Liquidation of the City Debt, shall prosecute its said appeal to effect, and shall answer all damages and costs if it shall fail to make good its plea, then this
647 obligation shall be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of The Board of Liquidation of the City Debt.

(Signed) per H. C. MILLER, [L.S.]
(Signed) J. H. OGLESBY, [L.S.]
(Signed) HENRY C. MILLER. [L.S.]

Bond accepted.

(Signed) DON A. PARDEE,
Judge.

648 UNITED STATES OF AMERICA,

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing six hundred and forty-seven pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The Board of Liquidation *vs.* The Louisville and Nashville Railroad Company *et als.*, (except the plans marked A and B, offered in evidence by the complainants, which are set up in the original with the transcript of the appeal,) No. 10,180 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this seventeenth day of September, A. D. 1883, two (2) words interlined. Approved.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, Don A. Pardee, United States circuit judge for the eastern district of Louisiana, do certify that Francis A. Woolffey, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this seventeenth day of September, A. D. 1883.

Three (3) words interlined. Approved.

DON A. PARDEE,
Judge.

649 THE UNITED STATES OF AMERICA,

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States, to the Louisville and Nashville Railroad Company, and to the New Orleans, Mobile, and Texas Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Board of Liquidation of the

City Debt, a corporation created by the act of the Legislature of Louisiana, No. 133 of 1880, is appellant, and you and each of you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this third day of July, in the year of our Lord one thousand eight hundred and eighty-three.

DON A. PARDEE,
Judge.

650 [Endorsed.]

Serve on Bayne & Denegre, solicitors. United States Circuit Court, eastern district of Louisiana, No 10180.

The Board of Liquidation, appellant, *vs.* The Louisville and Nashville R. R. Co., et al., appellees; citation to appellees.

Marshal's Return.

Received July 18, 1883, by the U. S. Marshal and on July 18, 1883, I served a true duplicate of this the original citation of appeal on the appellees herein, to wit, the Louisville and Nashville Railroad Company and the New Orleans, Mobile and Texas Railroad Company, by handing the same to Thos. L. Bayne, Esq., of the law firm of Bayne & Denegre, solicitors for the aforesaid appellees in person in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, Eastern District of La.
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate of the within citation of appeal on the appellees herein named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn before me July 18, 1883.

F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

651 United States of America, Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

THE BOARD OF LIQUIDATION,
vs.
THE LOUISVILLE AND NASHVILLE R. R. CO., ET ALS. } No. 10180.

Supplemental transcript of record of the above-entitled cause which was inadvertently omitted from the main transcript in said cause, returnable to the Supreme Court of the United States on the second Monday of October, 1883.

Miller & Finney, solicitors for complainants.

Bayne & Denegre, solicitors for the Louisville and Nashville Railroad Company, and Charles F. Buck, solicitor for the city of New Orleans, defendant.

652 State of Louisiana, Eighth District Court for the Parish of Orleans.

THE NEW ORLEANS, MOBILE AND CHATTANOOGA R. R. Co.,
vs.
THE CITY OF NEW ORLEANS ET ALS. } No. 19.

Petition Filed April 5, 1870.

STATE OF LOUISIANA, *Parish of Orleans.*

To the Judge of the Eighth District Court of the Parish aforesaid:

The petition of the New Orleans, Mobile and Chattanooga Railroad Company, whose domicile is in New Orleans, respectfully shows, that by virtue of an act of the General Assembly of said State, approved the 19th day of August, 1868, they were authorized to locate, construct, maintain, and use a railroad, with one or more tracks, and with suitable turnouts from any point between Calliope and Girod streets, and between Delta
653 street and the levee, or the streets near the levee, in the city of New Orleans, to a point near Levee and Spain streets, thence by a curved line to Enghien street, and along that street and Lafayette avenue to Claiborne street, and thence to a point on the line of the States of Mississippi and Louisiana as should be designated by the directors of said company, which will more fully appear by a reference to the act No. 28 of the acts of 1868, which is made a part of this petition.

Your petitioners further show, that the General Assembly, on the 21st of February, 1870, further to expedite the construction of the said road, by an act approved at that date, authorized and empowered your petitioners to locate, construct, and maintain, and use for the passage of its engines and cars, the tracks of its railroad, with suitable curves, from the levee to the line desig-

nated in the ordinance of the city of New Orleans for the extension of Claiborne street, along and up the portion of Eylsian Fields street, and intervening streets originally designed for the two central banquettes, or walks in Eylsian Fields street, the said banquettes being two strips of ground twelve feet in
654 width, one upon each side of, and adjoining the land said . to be owned by the Pontchartrain Railroad Company, in the central portion of said street; and in the said act annulled all the ordinances of the city to obstruct this right, and prohibited the passage of others, and have entry to your petitioners upon the same.

Your petitioners further represent, that by the same act the mayor and common council and the municipal authorities thereof, as well as the city of New Orleans, were prohibited from passing any ordinance which might hinder or prevent the laying of the tracks of the railroad of your petitioners within the corporate limits of said city upon the streets or routes heretofore authorized by the State, and which have been or may be surveyed and located therefor, or which have been designated upon the maps of such tracks, or which shall obstruct, disturb, or interfere with such tracks, or with the full, free, and perfect enjoyment and use thereof by the said company, when laid upon such routes and lines; and all the ordinances, grants, contracts, or acts passed, made or done, or hereafter to be passed, made, entered into, or done by the
655 said city of New Orleans or the mayor and common council or the municipal authorities were declared to be wholly null, and to have no legal operative effect, all of which will more fully appear by the act relative to the said company of the date aforesaid, to which reference is craved, and the sixth section whereof is made a part hereof.

Your petitioners further show to your honor, that about the 29th day of December, 1868, they filed in the City Hall with the mayor, and in the secretary of State's office in that year, and also in the following year—April 8th, 1869—a map of their route, exhibiting its location in the city of New Orleans, and have since that time been employed in the construction of different parts of the road extending from this city to the city of Mobile, and since the enactment last mentioned they have modified their location so as to embrace the central banquettes aforesaid, all of which will appear by reference to copies of the said maps, marked A 1, 2, and 3, filed herewith; and that by virtues of the said surveys, locations, and legislative enactments, they became
656 fully empowered to construct, maintain, and use their road aforesaid, and lay down the tracks thereof, without let or hindrance or molestation from any persons or the municipal authorities of the city, or the corporation itself, or any other persons claiming through or under their authority, the object of the legislature being to insure the early and prompt completion of an

improvement which has been contemplated for many years, and not till now been commenced.

Your petitioners further show to your honor that they have commenced and are proceeding to the completion of the railroad contemplated in their charter, from Mobile, in Alabama, to the city of New Orleans, and have commenced the laying of their tracks in this city, and had well hoped to have the support of the municipal authorities of this city and all persons therein, but that certain persons who suppose that their profits may be diminished by this enterprise have combined to obstruct, impede, and interrupt their progress and to prevent their construction and use of
their tracks as defined in their maps and surveys afore-
657 said, have, in the city of New Orleans, and in that part
opposite the Jackson square and between that square and the Mississippi river, are actually laying down from the river northward, six tracks crossing the location of your petitioner's lines of tracks nearly at right angles.

Before the tracks reach the tracks aforesaid they approach by converging lines, and the rails of the separate tracks cross each other by frog plates of large dimensions.

The location of said tracks and frog-plates as now laid is impracticable according to their location aforesaid, while the number of rails and the proximity to be crossed would make the running of the engines and cars dangerous by throwing them from the tracks and breaking wheels and machinery.

Your petitioners state that George Pandely, Chas. A. Whitney, A. C. Hutchinson, the mayor and council of New Orleans, all of whom have their domicil in New Orleans, are implicated in this proceeding, the last by a toleration of a nuisance to their
sufferance of the acts aforesaid, and the others by their active
658 participation and interference in the same; and your petitioners state the same is done wantonly to injure and obstruct the progress of your petitioner's work by said parties.

Your petitioners further state that one Charles Morgan, who claims to be a citizen of the State of New York, pretends to have some right or interest therein, the quality of which is not intelligible to petitioners, but the use of it by him, his aiders and abettors, rendering it proper for him to be a party to this suit, as he is in some manner associated with Whitney and Co. and Pendely, and concerned with them.

Your petitioners state that the injury to them consists in the prevention of laying their tracks and obtaining the full possession and enjoyment of their rights, the delays consequent upon it in the completion of their road, and the diminution of their capacity to employ their road with full effect, the loss of interest on capital expended, and the expense of their officers, agents, and employees; and they claim damages to the amount of one hundred thousand dollars.

Your petitioners state that the grants of the legislature
659 to which your petitioners have referred are clear, direct, and certain in the declaration of your petitioners' rights, and entitle them to the protection they ask for.

Your petitioners pray that the city of New Orleans and its corporate authorities be enjoined from making or suffering any obstruction to the laying of the tracks of your petitioners, as authorized by the act of the General Assembly, and as laid down and described in maps filed with the mayor and secretary of State, copies of which are filed with this petition, and from recognizing or assenting to any of their ordinances which have been repealed by said acts; that the said corporation and its authorities, Geo. Pandely, Charles A. Whitney, A. C. Hutchinson, Charles Morgan, their agents and employees, assistants, and aiders and abettors, be enjoined with proceeding to construct their rail tracks across or near the tracks of your petitioners, opposite Jackson square in this city, so as to impede, obstruct, or interrupt the free passage of your petitioners' tracks, cars, and trains and other machinery, and that the said
660 rails and frog-plates now located or in the course of location, upon service of this injunction, be removed.

That citation issue to said city of New Orleans, and be served on its mayor and the several parties aforesaid to appear to this petition in due course of law, and that judgment be awarded against said Pandely, Chas. A. Whitney, A. C. Hutchinson, and Charles Morgan for one hundred thousand dollars as damages, and that your petitioners be maintained and upheld in all the grants made to them of passage and use of the tracks described in the said acts and maps as filed herewith, and a perpetual injunction be awarded on the final hearing, and your petitioner's title forever quieted.

That such other relief be granted as is consistent with law and right.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
Attorneys for the Plaintiff.

Affidavit.

Before me, a justice of the peace for the parish of Orleans,
661 personally came Wm. S. Williams, treasurer of the New Orleans, Mobile and Chattanoga Railroad Company, who made oath that the matters of fact stated in this petition his own knowledge are of as stated, and those derived from information he believes to be true as stated.

(Signed) WM. S. WILLIAMS.

Sworn to and subscribed before me April 4th, 1870.

(Signed) A. SHELLY,
Second Justice of the Peace.

Order.

CITY OF NEW ORLEANS *vs.* N. O. M. & T. R. Co.

Let writ of injunction issue as prayed for within upon petitioners' giving bond in the sum of five thousand dollars, conditioned as the law directs.

(Signed) HENRY C. DIBBLE,
Judge.

NEW ORLEANS, *April 4th*, 1870.

662 *Petition to transfer case to United States Circuit Court. Filed April 7th*, 1870.

Eighth District Court, for the Parish of New Orleans.

N. O., M. AND CHAT. R. R. Co., *vs.* CITY OF NEW ORLEANS, PANDELY, CHARLES MORGAN, *et als.* } No. 19.

The petition of Charles Morgan, who is a citizen of the State of Louisiana and a resident of the city of New York, in said State, respectfully represents:

That a suit has been instituted against him in this honorable court by the New Orleans, Mobile, and Chattanooga Railroad Company, incorporated under and by virtue of the laws of Louisiana, and having its domicil in the city of New Orleans, in said State of Louisiana, in which said New Orleans, Mobile, and Chattanooga Railroad Company claim one hundred thousand dollars.

663 And your petitioner now enters the first appearance in said court and avers that by the 12th section of an act of Congress of the United States, entitled: "An act to establish the judicial courts of the United States," approved September 24th, 1789, he has the right to have the cause removed for trial into the next circuit court of the United States to be holden in the district of Louisiana, and that the matter in controversy exceeds five hundred dollars, as will more fully appear by reference to the petition in suit No. 19.

That petitioner is sole owner of the property affected by the injunction issued by this honorable court, and petitioner refers to the affidavits annexed.

And your petitioner further represents, that he now offers good and sufficient surety for his entering in the said circuit court, on the first day of its session, copies of the said process against him, in a bond in the penal sum of one thousand dollars, signed by himself as principal and John B. Heno as surety as required by law, and conditioned as the law directs.

664 Wherefore your petitioner prays, the premises and the annexed bond being considered, that the court will be pleased to accept the surety offered, and that your honor will proceed no further in the cause, and that you will order the removal of the cause to the circuit court of the United States for the district of Louisiana.

And your petitioner further prays for general relief.

(Signed) HENRY J. LEOVY,
" and F. A. MONROE,
Attorneys for Charles Morgan.

Affidavit of Charles Morgan, annexed to petition to transfer.

Charles Morgan being duly sworn, deposes and says, that the allegations contained in the foregoing petition are true; that he is a citizen of the State of New York, and resides in the city of New York, in said State; that the New Orleans, Mobile and Chattanooga Railroad Company, are incorporated under and by virtue of acts of the Legislature of Louisiana, and have
665 their domicile in New Orleans, in said State; that the amount involved in said controversy exceeds five hundred dollars, and that he is sole owner of the property affected on which the injunction was issued.

(Signed) CHARLES MORGAN.

NEW ORLEANS, *April 6th*, 1870.

Sworn to and subscribed before me to-day.

[SEAL] (Signed) A. SHELLEY,
Second Justice of the Perce.

Judgment on rule to transfer.

Extract from Minutes, April 16, 1870.
Eighth District Court, for the Parish of Orleans.

N. O., M., and C. R. R. Co. *vs.* CITY OF NEW ORLEANS, *et als.* } No. 19.

In the matter of the prayer of Charles Morgan, one of the defendants herein, to remove the cause to the United States circuit court for the district of Louisiana, submitted to the court for determination, and for the reasons assigned in the written
666 opinion this day delivered and filed—

The court ordered that all further proceedings herein as against the defendant, Charles Morgan, cease, that the suit against said defendant be removed to the circuit court of the United States for the district of Louisiana, that the cause as against the other defendants remain as if this order of removal had not been made, and that the injunction against said defendants over whom this court has jurisdiction remain in full force and virtue.

667 *Answer. Filed April 19th*, 1870.

Eighth District Court for the Parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS *et als.* } No. 19.

Now comes into this honorable court George Pandely, Charles A. Whitney, and Alexander C. Hutchinson, residents of New Orleans, defendants herein, who for answer to plaintiff's petition, deny all and singular the allegations therein contained, except in so far as may be admitted.

Defendants allege that they have no personal interest whatever in the matter and things complained of in plaintiff's petition; that they are employed by Charles Morgan, and are paid monthly salaries by him; that Charles Morgan is the only party interested in this suit, and that by order of this honorable court, the cause, so far as Charles Morgan is concerned, has been
668 transferred to the United States circuit for the district of Louisiana.

Defendants deny that they, or any of them, are trespassers on the lands and premises described in plaintiff's petition; they allege that Charles Morgan was in legal possession at the time referred to, and that they were acting by his permission and under his authority.

That the Legislature of the State of Louisiana, by an act entitled: "An Act supplementary to an Act to Incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 30th, 1853, authorized and empowered said railroad company to locate, construct, maintain, and operate, a ferry or ferries, from the depot property, on the right bank of the Mississippi river to one *to one* or more points within the corporate limits of the city of New Orleans; and declared that the city of New Orleans should grant, cede, and donate to the said company, the right of landing for said ferry, or ferries, at one or more points within the corporate limits of the city of New Orleans,
669 and that spaces to be allowed for landing by the city for use of the said railroad should be defined and limited by the city council of New Orleans, by an ordinance No. 2890 (2290), approved July 10th, 1853, granted all that portion of the part of New Orleans from the beef market at the foot of St. Anne street, in the second district, fronting on the Mississippi river to the wharf of the New York mail steamers, the same being one hundred and fifty feet on the line of the river, and extending back in straight lines to Levee street, to the New Orleans, Opelousas and Great Western Railroad Company as a ferry landing and depot for passengers and freight, for the term of twenty five years from the passage of said ordinance named; and by another ordinance,

No. 799, new series, approved December 16th, 1867, granted an additional one hundred and twenty-five feet on the Mississippi river, commencing on the lower side of said ferry landing, at St. Anne street, and extending down the river and set the same
670 apart for the use of the said company for freight and ferry purposes.

Defendants further say that in the suit of Charles Morgan *vs.* New Orleans, Opelousas and Great Western Railroad Company, No. 5788 of the docket of the United States circuit court for the district of Louisiana, all the property and franchises of the said company were sold by the United States marshal on the 21st day of May, 1869, when Charles Morgan being the last and highest bidder, the property was adjudicated to him; and that by said adjudication the said Charles Morgan became the owner and possessor of the railroad belonging to the New Orleans, Opelousas and Great Western Railroad Company, with the depots and landings above described, ferries and ferry privileges, and all franchises belonging to said company, and particularly all the property and privileges described in plaintiff's petition, and of the right to land at the point described, at or near the foot of St. Anne street, and to use the spaces allowed by the city for the use of said railroad
671 and for the convenience of the travel and transportation by said railroad.

Wherefore these defendants ask for judgment in their favor, with costs, and for all general and equitable relief.

(Signed) HENRY J. LEOVY,
" F. A. MONROE,
Attorneys for Defendants.

Supplemental petition, affidavit, order, and bond. Filed May 2, 1882.

N. O., M., AND C. R.R. Co. *vs.* CITY OF NEW ORLEANS *et als.* } No. 19.

To the Honorable the Judge of the Eighth District Court for the Parish of Orleans.

The petition of the New Orleans, Mobile, and Chattanooga Railroad Company, domiciled in New Orleans, respectfully shows that the said corporation has been duly organized and incorporated by the State of Louisiana. That under and by operation of the acts of incorporation, and divers acts of the General Assembly, passed the 19th of August, 1868, 17th of February, 1869,
672 and 21st February, 1870, there has been granted a right of way through the streets and on and across the levee of the city, and that the General Assembly have by these acts adopted the maps and surveys of said company, as filed, and has designated the place in Elysian Fields street through which the said

road, described in the acts aforesaid, might pass in the city of New Orleans.

The petitioners further represent that heretofore, in this honorable court, they sued out a writ of injunction against Charles Morgan, George Pandely, Chas. A. Whitney, and A. C. Hutchinson, together with the city of New Orleans, whereby the said corporation of the city was enjoined and required to keep open and to maintain the streets and public places aforesaid, free and clear of obstructions, so that the said petitioners might lay down their tracks of railroad through the city free of all obstruction, and that they should not be hindered and prevented in constructing, operating, and maintaining their roads under the acts of the General Assembly aforesaid, and their survey as aforesaid, copies of which maps whereof are herewith filed as a part of the
673 petition, and to be taken as a part thereof.

Your petitioners further state that the Pontchartrain Railroad Company, a company having a short road from this city to the Lake Pontchartrain, obtained, about the year 1830, a permission from the city council of New Orleans, to run their railroad along the streets, road, and walking avenues which line the space of ground reserved by Mr. Bernard Marigny, so far that no inconvenience shall result to the public, and under this permission they have not only run their road but placed some structures upon the northern and southern, or upper and lower banquettes described in the act of 21st of February, 1870, in section one of that act.

They further represent that, without title, the said corporation have taken possession of certain property dedicated by Bernard Marigny as a place for a canal, and was held and reserved for that purpose by him, and only reserved therefor.

But the said corporation, under a pretext of a claim for his canal rights, have appropriated the same for their own use without making a canal.

674 These petititioners further aver that the said company have refused obedience to the act of the Legislature appropriating these banquettes to the public use designated in said act, and while the same was before the Governor of the State for consideration, and on the same day that the same was approved by him, the said Pontchartrain Railroad Company went before the seventh district court and obtained an injunction *ex parte* to restrain your petitioners from laying their tracks and otherwise appropriating the said property, which injunction has become of no effect by the establishment of this honorable court.

These petitioners aver that the same was done to evade the operation of an act that had passed the two houses of the General Assembly, and was about to become a law.

That these petitioners had not done, or attempted to do, any act in the premises violative to the said property, nor had the

Pontchartrain Railroad Company the least ground to apprehend injury to said property, or any appropriations of the said tracks, unless the said company were deprived of their license by
675 competent authority.

The petitioners aver that the act of the General Assembly does revoke all permission and license on the part of the city of New Orleans; and from the date of said act of 21st of February, 1870, before referred to, relative to the New Orleans, Mobile and Chattanooga Railroad Company, the said Pontchartrain Railroad Company have retained said property without license, and are trespassers and wrong-doers.

The petitioners further represents to your honor that George Pandely is the superintendent of said Pontchartrain Railroad Company, and the said Charles A. Whitney and A. C. Hutchinson, either as agents or otherwise, are associated and combined with him and with the Pontchartrain Railroad Company to defeat the operations and obstruct the actions of the petitioners; and both of them represent their entire ability and disposition to maintain their possession.

To the end, therefore, that the rights and powers granted to these petitioners by the public act of the General Assembly aforesaid, and that the rights therein granted may be en-
676 forced and the supremacy of the law vindicated, your petitioners respectfully pray that the injunction heretofore granted in the suit of the petitioners against the city of New Orleans and the corporate authorities of the same may be extended to embrace the tracks described in the surveys and maps of surveys, and a copy of which is filed herewith, and this petition be taken and held as supplemental to the petition in that cause; that the Pontchartrain Railroad Company be made a party to this suit, and that the superintendent, George Pandely, and the said company, together with said Charles A. Whitney and company, their agents, attorneys, employees, or other parties connected with them, be severally and collectively enjoined from obstructing, hindering, preventing, or in any wise interfering with the laying of the tracks of the company upon the grounds specified in the maps of surveys and the spaces of ground mentioned in the first section of the act of the 21st of February, 1870, of the General Assembly aforesaid, being the central banquettes aforesaid, and from hindering and obstructing the
677 removal of any structure or material thereon that may in any manner hinder or obstruct or impair the location, maintenance, construction, and use of the said road.

And your petitioners further pray that citation may issue to the said several defendants aforesaid; and that such other relief be granted as may be just and proper.

(Signed) CAMPBELL, SPOFFORD AND CAMPBELL,
For Petitioner.

Affidavit.

STATE OF LOUISIANA, *Parish of Orleans.*

Before me personally came W. S. Williams, who maketh oath and saith that he is treasurer of the New Orleans, Mobile and Chattanooga Railroad Company, who maketh oath and saith that the matters of fact stated in the foregoing petition are true in substance and matter of fact as therein stated.

(Signed) W. S. WILLIAMS.

Sworn to and subscribed before me, the 30th day of April, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Order.

678 Let this supplemental petition be filed.

Let the Pontchartrain Railroad Company be made a party hereto, and together with the other parties defendant cited.

Let an injunction issue, as within prayed for and according to law, upon petitioners, giving bond in the sum of twenty-five thousand dollars, ($25,000,) conditioned as the law directs.

New Orleans, April 30th, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Bond. Filed May 2, 1870.

Know all men by these presents, that we, the New Orleans, Mobile and Chattanooga Railroad Company, as principal, and Thomas B. Lee, as security, of the city of New Orleans and the State of Louisiana, are held and firmly bound unto the Pontchartrain Railroad Company in the sum of twenty-five thousand dollars, lawful money of the United States, to be paid to the said Pontchartrain Railroad Company, its heirs, executors, and
679 administrators, firmly by these presents, sealed with our seal, and dated the sixth day of April, in the year of our Lord 1870. Whereas, the said New Orleans, Mobile and Chattanooga Railroad Company has this day presented a petition to the honorable the eighth district court for the parish of Orleans, praying a writ of injunction. Now the condition of the above obligation is that we, the above bound New Orleans, Mobile and Chattanooga Railroad Company and Thomas B. Lee, security, will well and truly pay to the said Pontchartrain railroad, the defendants in said suit, all such damages as said company may recover against us, in case it should be decided that the injunction was wrongfully obtained.

(Signed) W. S. WILLIAMS,
Treasurer N. O., M. and C. R. R. Co.

(Signed) THOS. B. LEE.

Signed, sealed, and delivered in presence of—

(Signed) R. W. ROGERS.

Writs of Injunction issued with Supplemental Petition, May 2d, 1870.

680 State of Louisiana, Eighth District Court for the Parish of Orleans.

N. O. M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS *et als.* } No. 19.

The State of Louisiana to the Pontchartrain Railroad Company, through its proper officers, George Pandely, C. A. Whitney, and A. C. Hutchison, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the eighth district court for the Parish of Orleans, from obstructing, hindering, or in any way interfering with the laying of the tracks of the New Orleans, Mobile and Chattagnooga Railroad Company upon grounds specified in the maps of survey now on file in this office, and the space of ground mentioned in the first section of the act of the 21st of February, 1870, of the General Assembly of the State of Louisiana being the central banquette or walking avenue which lines the space of ground reserved by Mr. Bernard Ma-
681 rigny, being two strips of ground twelve feet in width, one upon each side of and adjoining the land said to be owned by the Ponchartrain Railroad Company, in the central portion of Elysian Fields street, with requisite curves to and from the same, from the levee and from Claiborne street, and you are also restrained from hindering and obstructing the removal of any structure or material thereon that may in any manner obstruct or hinder or impair the location of tracks, maintenance, construction, and use of the New Orleans, Mobile and Chattanooga Railroad Company.

And you are so enjoined and restrained until the further order of this honorable court.

Witness the Honorable C. Dibble, judge of our said court, the second day of May, in the year of our Lord eighteen hundred and seventy, and in the ninety-fourth year of the independence of the United States.

(Signed) JOSHUA CORPREW,
D'y Clerk.

Exception of the Ponchartrain R. R. Co., Filed May 11th, 1870.

682 Eighth District Court, Parish of Orleans.

N. O., M. & C. R. R. Co.
vs.
CITY OF NEW ORLEANS, *et als.* } No 19.

The defendants, the Ponchartrain Railroad Company, respectfully decline the jurisdiction of this honorable court, and except

to its jurisdiction and to the supplemental petition herein filed by the plaintiff, on the following grounds, viz:

That before this suit was brought, and before the enactment of the law creating this honorable court, a suit was pending, and issue joined between the plaintiffs and these defendants, in the honorable the seventh district court for the parish of Orleans, involving precisely the same matters and issues presented in the supplemental petition herein filed by the plaintiffs, which said suit is still pending and undetermined in the said seventh district court.

That before the enactment of the law creating this honorable court, an injunction was granted by the seventh district
683 court in the cause aforesaid, in favor of these defendants, and against and served upon the plaintiffs, which has never been dissolved, and is still in full force and effect, precisely repugnant to that herein granted and issued in favor of the plaintiffs, and involving precisely the same matters, property, rights of property and franchises.

That the said seventh district court was at the time of the institution of the said suit therein, and still is a court of competent jurisdiction to deal with and decide all the matters and issues therein involved, and to regulate and control all the proceedings and processes therein had and issued; and that since the creation of this honorable court the plaintiffs have voluntarily submitted to the jurisdiction of the said seventh district court in said cause and have never excepted thereto; all of which will more fully appear by reference to a duly certified transcript of said cause already filed in this cause, to which reference is made for
684 greater certainty.

That some of the other defendants, besides the Pontchartrain Railroad Company, have any interests in the matters and issues presented in the said supplemental petition.

Wherefore these defendants plead the pendency of said suit and proceedings in said cause in said seventh district court in abatement of this suit.

2d. That before the filing of the supplemental petition herein, there had been instituted by the plaintiffs a suit against these defendants and their co-defendants A. C. Hutchison, C. A. Whitney, and George Pandely, in this same court, being No. 21 on the docket, involving the same matters and issues presented in the said supplemental petition, which suit is still pending and undetermined, and that in that cause an application by the plaintiffs for an injunction of the same force and effect as that issued herein is still pending and undetermined in a rule to show
685 cause, to which rule exceptions and an answer have been filed by these defendants, all of which will more fully appear by the record in said cause No. 21 already offered in evi-

dence herein, the pendency of which suit and the proceedings therein these defendants plead in abatement of this suit.

3d. That these defendants are strangers to all the matters and issues involved in the original petition and have no sort of interest therein, have never been made parties thereto or cited therein, and that the matters set forth in the original petition are entirely distinct and different from and disconnected with these presented in the supplemental petition, and that thus plaintiffs have, in their original and supplemental petition, improperly cumulated entirely distinct and different causes of action against Charles Morgan and other defendants, in which this defendant has no interest or concern, with special causes of action and matters
686 in which these defendants have an interest.

And that thus there has been a misjoinder of causes of action and parties by which these defendants, unless corrected by the order of this honorable court, will be greatly prejudiced in their defence and exposed to great costs, trouble, loss of time, and annoyance, and complication and confusion in conducting their defence.

Wherefore these defendants pray to be hence dismissed with their costs, and for general equitable relief.

(Signed) LEA, FINNEY AND MILLER,
Attorneys.

Answer of the City of New Orleans. Filed June 26th, 1870.

Eighth District Court, Parish of Orleans.

N. O. M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS, *et als.* } No. 19.

Demand in Reconvention.

And now before the court comes the city of New Orleans, and for answer to the petition herein filed and served, she denies each and every allegation therein contained; and upon the trial of this cause will require strict and legal proof thereof.

And for further special answer, she denies that the said plaintiff has ever acquired a right or title to, or is the owner in fee or otherwise, of the landed estate or immovable property, or any part or portion of the ground claimed by said plaintiff, or referred to in the petition.

And for further answer this respondent says:
688 That all that portion of the ground or real estate claimed by the plaintiff, situated above Canal street, forms a part of the batture lying in the old fauborg of St. Marie, and that on or about the 20th day of September, 1820, a certain act was entered into by and between Edward Livingston and other riparian propri-

etors and the city of New Orleans, wherein and whereby the entire alluvion or batture in front of the aforesaid suburb St. Marie, and the accretion thereafter to become attached to the same were dedicated to public use and the purposes of business and commerce; and upon the express understanding and condition that the same should thereafter remain and continue a *locus publicus*, out of commerce, and not to be affected by any adverse claim or grant which might be set up against the same.

That for many years anterior to the authentic act of dedication above referred to, and more than fifty years previous to the passage of the acts of the Legislature of the State of Louisiana referred to in plaintiff's petition, certain riparian proprie-
689 tors owning property in the old fauborg of St. Marie, without any particular form or ceremony, converted the entire batture in front of such suburb into a *locus publicus*, and set the same apart for the use of the public, composed almost entirely of citizens of the United States, upon the condition that the batture thus informally dedicated should remain and continue to be solely appropriated for that purpose.

And this appearer further shows that the aforesaid batture for more than fifty years prior to the acts and doings of the plaintiff hereinafter set forth and complained of, and up to the time of the committing of such acts and doings was used and enjoyed as a *locus publicus*, and to the interests of business and commerce, and that the same, and particularly that portion thereof referred to in plaintiff's petition, is now needed for public use and to meet the exingencies and demands of the business and commercial relations of the city of New Orleans, and the wants of the
690 community at large, composed mostly of citizens of the United States.

Further, this respondent says, that all that portion of the real estate or ground claimed by the plaintiff, commencing from lower line of suburb St. Marie, at Canal street, and running thence down to Elysian Fields street, forms a part of the batture lying in front of the "Old City of New Orleans," as this respondent will show upon the trial of this cause.

That on the sixth day of December, 1717, a charter was granted by the King of France to a corporation styled the "Western Company," that under the auspices of the said company the ground where the old city of New Orleans now stands was selected as a place for the principal settlement, and the foundation of the city was laid; and that in 1724 and (1728) all the batture lying in front of the old city of New Orleans was laid off as a quay, and thus and otherwise was dedicated as a *locus publicus*, and as common property to the use of which all the inhabitants of the city
691 of New Orleans, and even strangers, became entitled.

That upon the original plans of the city, has made by the King of France at its foundation in the years 1724 and 1728,

the aforesaid batture, lying in front of the old city of New Orleans, and extending from the front row of buildings down to the river edge, was recognized as a *locus publicus;* that such batture was not only needed as a place to be used in common, but has been in the uninterrupted possession and actual enjoyment of the inhabitants of the city of New Orleans, composed almost entirely of the citizens of the United States and strangers, as a place of public use from the years of 1724 and 1728 down to the commencement of this suit, and that lots and squares of ground abutting upon such batture have been sold and bought, and buildings have been erected upon the said squares and lots, in reference to the said batture then being and forever after remaining a place dedicated to public use.

This respondent, further answering, says that all that
692 portion of ground or real estate claimed by the plaintiff, and over which they seek to run their road, extending from the point of intersection of the batture with Elysian Fields street back to the point where the last-mentioned street intersects with Claiborne street, has been dedicated by ordinances of the said city of New Orleans and otherwise as parts of a public street or highway, and for the convenience and use of the inhabitants of the said city and others, and that the same has been possessed, used, and employed as a street, highway, or public place for more than thirty years before the commencement of the present suit.

And this respondent further says that the construction of the New Orleans, Mobile and Chattanooga railroad by the contemplated route through the said city of New Orleans, and the running thereon passenger and freight trains, particularly when propelled by a locomotive or steam engine, and the enjoyment of the grants and privileges set forth and contained in the
693 several acts of the legislature referred to in plaintiff's petition, will prevent the use of the batture and Elysian Fields street by the public as a *locus publicus* and highway; will destroy the object of the dedications as hereinabove set forth, and will give the plaintiff the exclusive use of ground the use of which alone belongs to and is now needed by the inhabitants of the said city of New Orleans and others.

And this respondent, for further answer, says that in and by the acts of the legislature referred to in plaintiff's petition, certain property or real estate belonging to certain individuals unknown to this respondent, and certain other property or real estate belonging to this respondent, and lying at different points along the route of the said plaintiff, from its commencement at or near Calliope street to its terminus at the rear limits of the city, have been taken from the owners thereof and bestowed upon the said plaintiff, and that the said plaintiff, acting under the grants and privileges pretended to have been conferred by the aforesaid

694 acts of the Legislature of Louisiana has appropriated to itself the aforesaid property, and has taken and applied the same to its own use and benefit, the value of the property thus pretended to be given to and actually taken by the said plaintiff, belonging to this respondent, not being less than five hundred thousand dollars.

And this respondent, further answering, says that the State of Louisiana had no right, title, interest, or claim as owner to any portion of the property or grounds, or real estate referred to in plaintiff's petition, and had no right to pass any law divesting any of the rights of the owners of said property, or of the public, in any other way than to authorize property to be taken for purposes of public utility and for adequate compensation, by exercise of the right of eminent domain.

That the acts of the legislature particularly referred to in plaintiff's petition, and the enjoyment of the grants and privileges therein pretended to be granted and conferred, will give
695 the plaintiff the ownership and control of certain property belonging to this respondent and others without compensation, and will, moreover, give to them the possession of a *locus publicus*, the right to the use and employment of which is in the public, composed almost entirely of citizens of the United States, and will thereby, and otherwise, interfere with, and impair, rights vested in, and contracts in favor of, said owners and the public, composed almost entirely of citizens of the United States; that for these and other reasons, the several acts of the Legislature of Louisiana aforesaid, and the pretended grants and privileges to the New Orleans, Mobile and Chattanooga Railroad Company, referred to in plaintiff's petition, and by said plaintiff relied on to maintain the present action, were made, passed, and given, in violation of sec. 10, art. 1, of the Constitution of the United States; 1st sec. of the 14th amendment to the Constitution of the United States; sec. 20, art. 6, of the constitution
696 of Louisiana, adopted in 1812; art. 109, constitution of said State, adopted in 1845; art. 105, constitution of said State, adopted in 1852; art. 109, constitution of said State, adopted in 1864, and art. 110, of constitution [of] said State, adopted in 1868, and are, therefore, absolutely null and void, and without effect.

And this appearer further says, That the several acts of the Legislature, referred to in the plaintiff's petition, are unreasonable, oppressive, and in disregard of the lawful and constitutional rights of this respondent, and of the owners, and the public at large of the city of New Orleans.

This respondent further answering, says, That the acts and doings of the said plaintiff, in taking possession of, and appropriating to their own use, the real estate, or the ground over, or through, which their road has been, and is, contemplated to be

run, are in other respects in violation of the respondent's legal and constitutional rights, and are without sanction or authority in law or equity.

Further this appearer shows unto the court, That the
697 New Orleans, Mobile and Chattanooga Railroad Company, improperly, unlawfully, and in violation of the provisions of the Federal and State Constitutions hereinabove referred to, and in violation of the legal and equitable rights of this respondent, unless enjoined by the court, will take sole and absolute control and possession of all the property, real estate, and grounds referred to in the petition, and will enclose and occupy a large portion of the same for its own exclusive use and purposes; all of which will more fully appear from the averments in plaintiff's petition contained, and from the evidence to be produced on the trial of this cause.

Wherefore this respondent prays that the plaintiff's petition and injunction be dismissed at its costs, and that upon the original action judgment may be rendered in favor of this respondent and against the said plaintiff.

And this appearer, now reconvening and becoming plaintiff in reconvention, prays that the New Orleans, Mobile and Chattanooga Railroad [Company] may be cited to appear and
698 answer this demand in reconvention; that upon the allegations and averments hereinabove set forth judgment in reconvention may be rendered in favor of this appearer and against said company; that the said company may be required to remove any and every enclosure, work, and obstruction of every kind, name, and nature placed upon the property, grounds, or real estate referred to in the petition, and adjudged and decreed to put the said property, ground, or real estate in the same condition which it had before being taken into the possession of or interfered with by the said company; that the said company be perpetually enjoined and restrained from preventing or hindering in any way or manner the property, ground, or real estate, the title of which is in this respondent, from being used by this respondent as owner, and be further enjoined and restrained from preventing or hindering such portion of the said property, ground, or real estate as has been dedicated to public use from being used and enjoyed by and for the benefit of the public at large as a *locus publicus*, and for the
699 use and purposes of public business and commerce; that this appearer recover of the plaintiff all such damages as this respondent has sustained, with interest according to law; that in the event final judgment be not entered restraining the plaintiff, as hereinbefore prayed for, and judgment be rendered in its favor, maintaining the said company in the possession and control of the real estate and grounds referred to in the petition, in whole or in part, and in that event only, respond-

ent may have judgment for the full value of her property and rights appropriated by the New Orleans, Mobile, and Chattanooga Railroad Company, with damages in accordance with law; that appearer's rights against the surety on the injunction bond be reserved; that respondent recover costs, and have general relief in the premises.

(Signed) GEO. S. LACEY,
City Attorney.

699½ Decree in the suit of the N. O., M., & Chat., R. R. Co. *vs.* City of New Orleans *et als.*, No. 19, 8th district court.

"And it is still further ordered, adjudged, and decreed that upon the answer and demand in reconvention filed by the city of New Orleans, and upon the issue made thereon, there be judgment against the plaintiff in reconvention, the city of New Orleans, and in favor of defendants to said plea and demand, the New Orleans, Mobile, and Chattanooga Railroad Company; that the several acts of the General Assembly, granting the New Orleans, Mobile, and Chattanooga Railroad Company the right to construct, maintain, and use its tracks, turnouts, switches, depots, etc., etc., along and upon the levee, streets, or batture in front of the city of New Orleans, be adjudged to have no right or title of private property in and to the batture property lying in front of the faubourg St. Mary; and that the said property, and especially those spaces of ground described in the grant to the plaintiff, be decreed to be the property of the public, whose destination can only be exchanged by legislative authority, and which the city of New Orleans cannot alienate or encumber."

700, 701 *Petition and Order for Suspensive Appeal. Filed December 27th*, 1871.

Eighth District Court for the Parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS *et als.* } No. 19.

To the Honorable the Judge of the Eighth District Court for the Parish of Orleans.

The petition of the city of New Orleans, a municipal corporation chartered by law, respectfully represents:

That she is informed, and believes, that there is error in the judgment rendered in the above-entitled and numbered cause to her prejudice, and that she feels aggrieved by such judgment, and is desirous of taking a suspensive appeal therefrom.

That by law the city of New Orleans is dispensed, in all cases, from giving bond and security.

The premises considered, petitioner prays that she
702 be allowed a suspensive appeal from the final judgment rendered herein, returnable before the honorable the supreme court of Louisiana, on the third Monday of of January, A. D. 1872, without bond and security; and that the New Orleans, Mobile and Chattanooga Railroad Company, George Pandely, Charles A. Whitney, A. C. Hutchison, Charles Morgan, The Pontchartrain Railroad Company, and all parties whosoever interested in the judgment rendered in this cause, be recited to appear and answer this appeal.

And as in duty bound petitioners will ever pray.

(Signed) GEO. S. LACEY,
City Attorney.

Order.

Let a suspensive appeal be allowed the city of New Orleans, returnable before the honorable the supreme court of the State of Louisiana, on the third Monday of January, A. D. 1872, without bond, and let all parties be cited as prayed for, and according to law.

703 New Orleans, December 27, 1871.

(Signed) HENRY C. DIBBLE,
Judge.

State of Louisiana, Fifth District Court for the Parish of Orleans.

NEW ORLEANS, MOBILE AND CHATTANOOGA R. R. Co. *vs.* CITY OF NEW ORLEANS *et als.* } No. 738.

Petition. Filed July 6, 1869.

To the Honorable the Judge of the Fifth District of the Parish of Orleans, State of Louisiana:

The petition of the New Orleans, Mobile and Chattanooga Railroad Company, a corporation incorporated, organized, and existing under an act of the General Assembly of the State of Alabama, and recognized and approved by acts of the General Assembly of the State of Louisiana, under which it has a domicile in the city of New Orleans, respectfully represents to your honor:

1. That by several acts of the General Assembly of the
704 States of Alabama and Louisiana, your petitioners have been incorporated for the purpose of constructing a railroad, or railroads, from the city of Mobile to the city of New Orleans, and from thence to the State of Texas, with the power to own the right of way, depots, turnouts, and whatever else might be suitable for the works of the company. All of which will more fully appear by the acts of the General Assembly of Louisiana relative thereto, approved 19th August, 1868, and 17th

February, 1869, as published in the acts of the said General Assembly.

2. Your petitioners would further represent that whatever has been imposed as a condition upon the petitioners they have performed.

The road which they contemplated between New Orleans and Mobile is under contract, and an important portion of the work has been done in exact fulfilment of the conditions of the charter and the entire road will be finished before the month of July of the next year; and that the said corporation is using their energy and resources for the extension of the road through Louisiana, into the interior of Texas.

3. Your petitioners would further represent that they
705 obtained from the General Assembly of Louisiana a grant to the effect following, to be found in the fifteenth section of an act of the General Assembly of 17th February, 1869, being an act to expedite the construction of the railroad of the New Orleans, Mobile, and Chattanooga Railroad Company in the State of Louisiana: "And there is hereby granted to the said company, the right to locate, construct, maintain, and use a passenger depot, with office and apartments suitable for its legitimate business, upon the part or portion of the levee or streets and grounds in the city of New Orleans, bounded by Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot, and for the purpose of its legitimate business, to enclose and occupy the block of ground, parts of streets, and portion of levee in said city bounded by Girod, Water, and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street; provided said company shall not enclose or occupy part or portion of the blocks of ground within the said last named limits, which is the private property of individuals, until said company has acquired the title themselves."

706 Your petitioners aver that the possession of said grounds for a depot of their road will be useful and beneficial, and that they have acquired by purchase all of the private property within the boundaries of the said ground of the State as aforesaid, and are now ready to enclose and occupy the same for the purpose mentioned in the said section of the act aforesaid.

4. Your petitioners would further represent that upon the map of the city of New Orleans there is a block of lots bounded by Girod, Notre Dame, Water, and the continuation of Pilie streets, known as 27 A, which has never been sold by the city, nor being enclosed or occupied, which is comprehended in the grant by the State of Louisiana, to your petitioners as aforesaid, and as heretofore been used by the public, which is important to the objects and plan of this company, and which they are desirous of holding.

Your petitioners suppose that the powers of the State to dispose of the same for the benefit of this company to be unquestionable, and that they have a present right to take possession thereof; but your petitioners are informed that this is not
707 admitted, and that the city authorities, or some portion of the council of the same, held that this property belongs to the city, and the State cannot appropriate it to the use of the company, unless upon the payment of an indemnity or compensation therefor to the city.

And your petitioners are further informed, and aver the fact to be, that the city has received and is entertaining propositions for the purchase of the property notwithstanding this State grant, to defeat the same, and that they threaten to frustrate the beneficial legislation of the State aforesaid to gratify some private end of some party who is not unwilling to obstruct your petitioners.

5. Your petitioners would further represent that they have attached to this petition a map or plan of the property described in the grant of the State aforesaid and its relative situations to the streets and public places, and have indicated in the said map the places which have been procured by your petitioners, and that are claimed under the grant.

Your petitioners say that they are informed that this land was originally a part of the levee, and that it forms a part of
708 the land referred to in the act of the Legislature, No. 257 of the acts of 1850, and that the city of New Orleans is entitled to the administration of the same for the public benefit, and with a power to sell the same for specific objects; but whether the State of Louisiana has conveyed to the corporate authorities of this city a right paramount to the right of the State, your petitioners are not prepared to admit nor to determine.

But your petitioners are entirely willing to perform their entire duty in this behalf, and to pay any compensation to the corporate authorities of the city that may be due upon the adjustment of the existing question on the subject.

6. Your petitioners would represent to your honor that by their charters they have a right to appropriate lands for depots in private ownership, and in this case the State itself has appropriated the land for the use of this corporation, and that therefore there can be no question open but to ascertain whether the city of New Orleans has a title, and what is the value of that right in connection with or separate from the right granted by the State.

709 7. Your petitioners state that the difficulty of ascertaining the exact title of the city of New Orleans, and how far the same is subject to the power of the State for disposition, renders it necessary for these petitioners to apply to your honor for relief.

To the end, therefore, that your petitioners may have relief,

they pray that the city of New Orleans may be cited to appear before this honorable court, and that the city of New Orleans may show cause, if any they have, why your petitioners should not enclose and occupy such portions of the property aforesaid as may not be in private ownership, but which has been under the control of the city authorities, and for that purpose that the city of New Orleans shall exhibit their title thereto.

Your petitioners would further pray that if the said city should exhibit any right, or any cause issuing from any right to the said property, then that the court would proceed, under the laws of expropriation applicable to this case, to ascertain in a legal and just manner the amount of the compensation which your
710 petitioners shall pay for all of their right within the bounds aforesaid; your petitioners hereby and herein offering to do and perform whatever the court may order in this behalf.

Your petitioners pray that the city of New Orleans be enjoined and restrained from bargaining, selling, broking, or in any wise alienating or encumbering any of the property described in the State grant above described until the final order and decree of this court; and your petitioners pray for general relief in the premises.

(Signed) L. A. SHELDON,
Attorney for Plaintiffs.

Supplemental Petition. Filed July 15, 1869.

STATE OF LOUISIANA, *Parish of Orleans.*

Fifth District Court of the said Parish of Orleans.

To the honorable the judge of the fifth district court aforesaid:

The New Orleans, Mobile and Chattanooga Railroad Company, a corporation duly established and recognized under the
711 laws of Louisiana, and having its corporate domicile in this State, in New Orleans—

Respectfully represents to your honor that they heretofore filed in this court their petition, whereby they set forth their title under the fifteenth section of the act of the Legislature of the State, approved the (17th) seventeenth of February, 1869, having for its title an act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana, and that the said corporation had fulfilled the conditions by procuring titles to such portions of the land granted therein, which is the private property of individuals, and that the said corporation was entitled to the use, occupation, for the purposes of their improvement, the public rights to all of the property therein set forth, which averments and statements, as herein described, are confirmed and renewed.

2. Your petitioners further state that, having complied with

the grant of the State in the matter aforesaid, they were prepared to occupy the said lands for the purposes aforesaid, when
712 they were threatened by interference and obstruction by the action of the corporate authorities of the city of New Orleans, and for the purpose of preventing such injuries and illegal molestation they brought their said suit, and obtained from your honor an order for an injunction, the conditions of which order was complied with, and the writ of injunction was duly served upon the proper officers. In addition to which they caused the mayor to be served with a notice and remonstrance against the proposed action of said authorities, and vindicating their rights under the same act.

3. Your petitioners further represent, that notwithstanding the notice aforesaid and the injunction aforesaid, the corporate authorities have still entertained the proposition of Charles Morgan to purchase part of the land described in the above petition and included in the bounds of the grant by the Legislature, and the same, as your petitioners are informed, has passed the Boards, a copy of which, as published in the public papers, is attached and is supposed to be substantially correct, and which is to be
713 presented to the mayor for his action.

4. Your petitioners show to your honor that the ordinance of the said corporation, as passed by the Boards, and has been or is about to be presented to the mayor, contains untrue, erroneous, and wholly unfounded representations of the title and claims of said Morgan under a supposed purchase of the railroad of the New Orleans, Opelousas and Great Western Railroad Company, under a supposed valid proceeding in the circuit court of the United States, in a case where he was sole plaintiff and said said corporation was defendant.

But your petitioners represent that neither the proceedings in the said court nor the sale by the marshal gave such rights as claimed, and they aver that all of the proceedings in said court were and are without jurisdiction, the sale itself was void, and and that a writ of error upon the same is being presented to the Supreme Court of the United States to cause the same to be annulled and held for naught.

But your petitioners represent that neither the proceed-
714 ings in the said court nor the sale by the marshal gave such rights as claimed, and they aver that all of the proceedings in said court were and are without jurisdiction, the sale itself was void, and that a writ of error upon the same is being presented to the Supreme Court of the United States to cause the same to be annulled and held for naught.

But if they were all valid, they not comprehend the matter claimed in the said plan of ordinance, and that by said proceedings no rights were acquired on the east bank of the Mississippi

river or in the city of New Orleans, as will fully appear by the said proceedings.

5. Your petitioners aver that the New Orleans, Opelousas and Great Western Railroad Company did not mortgage their ferry, grant, or privileges, nor was it competent for any court to dispose of the same, nor did they pass by any sale, and all the pretenses of the kind set forth are false, fraudulent, and without any legal foundation, and that the same are introduced into the said ordinance to give a colorable pretext for the partial and
715 exorbitant grant to said Charles Morgan, to the wrong and injury of your petitioners.

6. That the grant is partial and exorbitant is apparent by the concluding clause of the first section of the aforesaid ordinance, which has passed the Boards, whereby, for the property granted, the price is fixed at fifty-four thousand dollars.

That your petitioners are ready, willing, and have submitted to the mayor an offer of double the amount, as will appear from a letter attached, marked A, which is a copy of a letter this day placed in the hands of the mayor, before any action on the said ordinance.

7. Your petitioners would further represent that the said ordinance is cunningly formed, to enable the beneficiary to cut off the communications with the depots and other erections which your petitioners have been authorized, to make and to diminish their value; for they have provided that no square shall be formed between Notre Dame and Girod streets, thus contemplating the closing of Pilie street, between Notre Dame and Girod streets.

716 8. Your petitioners affirm the validity of their grant from the Legislature of the State, and that the attempt to interpose the city of New Orleans as an antaganist and opponent of the State of Louisiana, and as granting rights in obstruction of those given by the sovereign authority of the State is wrongful and pernicious to the well being and dignity of the State, and calculated to bring contempt upon the public authority.

9. That the grant of the State to expedite and promote public improvement, projected and which is carried on to promote the commercial interest of the State and the city as well as of the whole Union, does give to the petitioners either a full and perfect right or, in any point of view, a right that can be made perfect by compensating the city for any particular corporate or other right it may have which the Legislature cannot dispose of.

10. And so your petitioners in their original petition, and now in this supplemental petition, ask the court to declare con-
717 tradictorily with the city what is the extent of the power of the State in the matter of disposing of the property aforesaid, and to ascertain what right if any, exists in the said city independently of said grant.

Your petitioners aver that the special particular action of the Boards since the filing of the petition of the petitioners, the service of notice on them, and the service of the injunction show a clear and manifest purpose on their part to defeat, if they can, the right of your petitioners to said property and place it in the hands of *a* favorites of the Boards.

11. Your petitioners are ready to submit the question of the value of such rights and claims within their grant to the clauses of their charter relative to the expropriation of property in the hands of corporations or individuals.

Your petitioners respectfully ask your honor to require of the said corporation in their answer to set forth any adverse title they have to the property included in the bounds of the grant of
of the State, as set forth in their original petition and
718 as described in the grant contained in the fifteenth section
of the act above refered to, and that they may declare wherein the act of the State is invalid or inoperative; and if, upon a view of the same, it shall be found that they have any right to proceed and that your honor would act under the clauses contained in their charter (or other legal way) for the attainment of the objects proposed by said grant.

The said grants showing fully the objects of the Legislature, as well as of this company, in the making of the same, the rights to be exercised, and the estate to be had in the same.

12. Your petitioners state that they had no expectation that the corporate authorities would hinder, delay, or attempt to defeat said grant, and were not aware of any clause adverse to the State until the action of the Boards as aforesaid, and that the said Boards have manifested by their disregard of the remonstrances
of the petitioners and the injunction of the court their
719 purpose to make a private sale to a favored party, against
all remonstrances of others as well as themselves, that no negotiations with them would have been productive of any result whatever.

13. Your petitioners will further call to the notice of your honor that one of the Boards passed this ordinance just before and another just after a judgment of ouster upon the right of a number of them to have their office had been pronounced in this honorable court.

14. Your petitioners crave reference to the acts of incorporation of their body by the Legislature of this State of the 19th of August, 1868, and the 17th of February, 1869, as parts of this petition, with liberty to refer to the same in the published acts.

To the end that justice may be done in the premises, your petitioners pray that the city of New Orleans be made a defendant to this supplemental petition, and that citation of the same may
be duly made, and that the said city of New Orleans, its
720 officers and agents, and all persons claiming or to claim

under them, be enjoined and restrained from hindering or obstructing, or in any manner interfering with your petitioners in the occupation, enclosure, or enjoyment of the lands described in the fifteenth section of the act of the 17th of February, 1869, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street, or Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street, and that their right to acquire and hold the same be not affected or impaired by any act of said corporation, but that your petitioners be maintained until the final action of this court; and that the mayor be enjoined from signing or approving of said ordinance or any ordinance relative thereto.

And your petitioners further pray of your honor that the corporation, thorough its proper officers, may answer the following interrogatories as upon facts and articles:

721 1. Has the corporation any and what right to the property or any part thereof as described in the petition aforesaid, and in the fifteenth section of the act; if yea, what portion of the said property is claimed, and by what right? Set forth the claim by metes and bounds, and the right and whence derived.

2. Have the corporation or any branch received any communication from Charles Morgan or his agents, or adopted any resolution or ordinance respecting the same? Set forth all communications, letters, and copies of all ordinances or resolutions, with the proceedings and dates of or concerning the same.

3. Have any and what communication been made to you by any officer or agent of the petitioners relative to the claim of Charles Morgan or their own? Attach copies of the same, and the date of their reception.

Your petitioners further pray that they may be quieted in their possession and title, and may be allowed to do and perform

722 whatever is proper in their behalf to protect the rights they have under the acts of the Legislature to make them operative, and for such other relief as they may be entitled to.

(Signed) JAMES A. RAYNOR,
President.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
Of Counsel for Petitioners.

(Signed) L. A. SHELDON,
Of Counsel.

Order.

Let an injunction issue according to the prayer of the petition as well to the corporation of the city of New Orleans, upon the plaintiff giving bond in the sum of five thousand dollars, conditioned as the law directs.

New Orleans, July 15, 1869.

(Signed) CHAS. LEAUMONT, *Judge.*

Letter attached to and made part of the Petition.

NEW ORLEANS, *July 15th*, 1869.

SIR: I, on behalf of the New Orleans, Mobile and Chattanooga railroad in Louisiana, have examined a projected
723 ordinance of the boards of aldermen, and which is to be submitted to you for approval.

The proposed ordinance operates upon property included in the grant of the State to that corporation, as contained in the fifteenth section of the act of the seventeenth February last.

This corporation instituted a suit in the fifth district court of the parish of Orleans, relative to the wrong done to the company by the city authorities.

They have also submitted a protest for the consideration of the corporate authorities of the city upon the same subject.

Notwithstanding this, the ordinance has passed the Boards, and we take for granted, that the city authorities design (so far as the action of the Boards is to be regarded) to defeat, if they can, the action of the Legislature.

The purpose of this communication is still to protest against their action, and, at the same time, to assure the corporate authorities of the city that this company are proposed to act with entire good faith to them.

If the city corporation has any right which is the subject
724 of sale, or disposition of them, within the bounds of the State grant, our corporation is prepared to make compensation therefor according to the law of the State, and such is the subject of their suit.

But without prejudice to our claims under the grant of the State or of any right, we submit to the city that we will pay to the corporation for the lands, property, and riparian rights, including the proposed sale and grant to Charles Morgan in the first and second sections of that ordinance, the sum of one hundred and eighty thousand dollars.

This will embrace a settlement of said suit for the property embraced in it, and will place the corporation of the city in possession of a price greatly beyond what is proposed by Charles Morgan.

To the extent of the differences of the city authorities, if this ordinance passes and becomes operative, make a donation to Charles Morgan, while the burden of the suit must be borne by them, which has been already commenced.

Very respectfully,

(Signed) WM. S. WILLIAMS.

Hon. J. R. CONWAY,
Mayor of the City of New Orleans.

Exception. Filed July 26, 1869.

725 Fifth District Court, for the Parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
THE CITY OF NEW ORLEANS.

And now comes into this honorable court the city of New Orleans, a political corporation duly chartered by law, defendant herein, and for exception to the petition herein filed on the 6th day of July, 1869, and to the supplemental petition filed on the 15th July, 1869, and to the right of the New Orleans, Mobile and Chattanooga Railroad Company, to maintain or proceed upon the said petition against the city of New Orleans, this defendant says:

That the said New Orleans, Mobile and Chattanooga Railroad Company, in their said petitions, has alleged and set forth two separate and distinct causes of action against defendants with respect to the property described therein, as follows, to wit:

1. That they are the absolute owners of the said prop-
726 erty, and, as such, are entitled to possess, enjoy, and dispose of the same, and now claim in that capacity; and

2. That they have a right to proceed at law to expropriate the said property as belonging to some other person or intelligent being than themselves, and to have the same taken out of the possession of any actual owner and placed in their possession and under their control; and they claim, and can only claim, to exercise the right to appropriate the property on the ground that they are not the owners of the said property; that the said two causes of action are contrary to and exclusive of each other, and that the said city of New Orleans is in law permitted to refuse to plead to the merits until the said New Orleans, Mobile and Chattanooga Railroad Company shall have made its selection and choice as to which of the said two causes of action it means to proceed under.

Wherefore the defendant prays that the exception may be maintained, and that the said New Orleans, Mobile and Chattanooga Railroad Company may be ordered to amend its petitions so as to present only one cause of action, and that
727 in default thereof, within a period to be fixed by this honorable court, the said petition be dismissed.

Now, for further exception to other portions of said petitions this defendant says:

That New Orleans, Mobile and Chattanooga Railroad Company had and has no right to embody in the said petition the matter contained in the fourth clause, because, 1st, this court can take no cognizance of or exercise any jurisdiction over the proceedings referred to therein as having been carried on under the au-

thority of the circuit court of the United States, and which are, as alleged therein, now pending in the Supreme Court of the United States on a writ of error; and, 2d, the validity of the sale referred to therein as having been made by the said Charles Morgan, under the authority of the said proceedings in the circuit court of the United States, cannot be inquired into by this court unless the said Charles Morgan be made a party to this suit.

728 Wherefore the said city of New Orleans prays that the said matter contained in the said clause No. 4 of plaintiff's petition may be stricken out of said petition, as impertinent in this cause and illegally introduced into the same, and that the said city of New Orleans may, by an express order of this honorable court, be dispensed from answering the same, or any part thereof.

And, for further exception to parts of the said petitions, the said city of New Orleans says:

That the said New Orleans, Mobile, and Chattanooga Railroad Company has no right in law to call on this court to require the city of New Orleans to set forth any special matter in the answer which the said city may file in this case, as claimed in the eleventh clause of the said supplemental petition, or to call on this defendant to make an oath any such answer, setting up matter of defense to the petition or to either of them; that the plaintiff has the right to propound interrogatories on the facts and articles to defendant, in order to obtain answers thereto on oath, to be used as

729 testimony in support of their demand; that the interrogatories propounded to the said city of New Orleans in the supplemental petition, and numbered 1, 2, and 3, do not specify any particular fact or facts relating to the rights of said city to the property referred to, or to the nature or character of any communication from Charles Morgan, or from petitioner, or of any resolution or ordinance, or of letters, and that in the premises the said interrogatories on facts and articles which a party has the right to propound to the other party in the course of judicial proceedings under the laws of Louisiana.

Wherefore the said city of New Orleans prays that the said clause No. 11, contained in the said supplemental petition, and the said interrogatories may be stricken out from the said supplemental petition, and that the city of New Orleans may, by an express order of this court, be dispensed from making any special answer, or any answer on oath, to the said petitition or supplemental petition, or from answering the said interrogatories or any portion of the same.

730 (Signed) HENRY J. LEOVY,
City Attorney for Defendant.

Exception. Filed October 22d, 1869.

In the Fifth District Court for the Parish of Orleans.

N. O., M. AND CHAT. R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 738.

Now comes the city of New Orleans, by J. R. Beckwith, city attorney, and for exception to said plaintiff's demand herein, saith that said plaintiff ought not to further have and maintain its said action against said defendant in this behalf, for it saith that, all and singular the allegations of facts in said petitions, original and supplemental petition, contain[ed] and properly pleaded and set forth therein are not, if taken as true, (which said defendant in no wise admits,) sufficient in law to entitle said plaintiff to further maintain the said action against said defendant, and to demand the relief in said petition demanded.

That said plaintiff is not in law permitted to assert said
731 alleged right by said plaintiff claimed or asserted in said petition in manner and form as in said action demanded, but is by law required to pursue and assert the same in another and different manner and form.

That this court has no authority in law to expropriate land for any purpose or fix the compensation therefor, as demanded in said action.

Wherefore said defendant prays judgment that said action be dismissed, that the injunction herein issued be dissolved, annulled, and set aside, with judgment against the said plaintiff, with costs, and for general relief, etc.

(Signed) J. R. BECKWITH,
City Attorney.

NOTE.—The proceedings in the fifth district court end here, the case having been transferred to the eight district court for the parish of Orleans, in conformity with the provisions of the act creating the eighth district court, the case bearing the number 4 on the docket of the said eighth district court.

732 *Petition of Intervention of Charles Morgan Filed July* 30, 1870.

Eighth District Court, Parish of Orleans.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 4.

To the Honorable the Eighth District Court of the Parish of Orleans, State of Louisiana.

The petition in intervention of Charles Morgan, a citizen of the State of New York, residing in the city of New York, in said

State, who now requires to be permitted to become a party in the above-entitled suit, to resist the claims of the said New Orleans, Mobile and Chattanooga Railroad Company, and of the State of Louisiana, asserted through the attorney general, who assumes to act for the same, the plaintiffs therein, and for the protection and establishment of his rights involved therein, respectfully represents that by adjudication at a public sale in a certain suit entitled "Charles Morgan *vs.* The New Orleans, Opelousas, and Great Western Railroad Company," No. 5788 of the docket of the United States circuit court for the district of Louisiana,
733 made to him on the 25th day of May, 1869, according to law, your petitioner became the owner and possessor of the completed grand division of the railroad of the said New Orleans, Opelousas, and Great Western Railroad Company, then in full operation between the city of New Orleans and Berwick's bay, beginning at what was then known as "Algiers," opposite the city of New Orleans, constructed by the said company in pursuance of their charter, being a distance of eighty miles, together with the road-beds of the main tracks and branches, and also all the depots and lands appertaining to them; all the buildings, wharves, and all equipments and franchises belonging to and appertaining to the said division of the said railroad, as will be seen by reference to a transcript of the proceedings in the said suit, No. 5788 of the docket of the circuit court of the United States for the district of Louisiana, which is herewith filed, marked "A," and that as the owner and possessor of the said railroad and the said franchises he was, and is now in law, entitled to main-
734 tain, run, and operate the said railroad for the transportation of freight and passengers, and to locate, construct, maintain, and operate a ferry or ferries from the depot property, appertaining to the said railroad, on the right bank of the Mississippi river, to one or more points within the corporate limits of the city of New Orleans, and to the right of landing for said ferry or ferries at the said depot property, on the right bank of the Mississippi river, and at one or more points within the corporate limits of the said city of New Orleans, and of using the spaces allowed by the said city for the use of the said railroad, and for the convenience of the travel and transportation by said railroad.

And your petitioner further represents that after he became the owner and possessor of the said railroad, and of the rights and franchises appertaining to the same, he found that all the arrangements for the transportation across the Mississippi river of freight and passengers were of the simplest description, and inadequate to effect it in a manner convenient and advantageous to the business and traveling public, and at a reasonable
735 cost; that, to carry out the intention of the Legislature, as passed in the second section of the said act, approved on the 30th day of April, 1853, "to insure the safe, certain, and

cheap transit of freight, passengers and merchandise," carried by the said railroad across the Mississippi river, your petitioner, as the successor to the rights and franchises of the said New Orleans, Opelousas, and Great Western Railroad Company, as aforesaid, by a particular title, was ready and willing to make such preparations for the transportation of freight and passengers across the said river, with the aid of the mechanical appliances of the day, that the freight to go over the said railroad from New Orleans should be received and placed in the cars in which it is to be transported on this side of the river, and no to be again disturbed until it reached its destination; and that the cars with freight for the city should be brought over the river so that the bulk would not be broken until the freight was in the city for delivery, if the city would give him the possession and control of such portion of the bank of the river,
736 and of the land adjacent thereto, as would be required for the erection of the warehouses and other buildings necessary for the accommodation of the freight to be carried and of the cars to be employed in carrying it, and for the landing of the boats engaged in the business of carrying freight and passengers, or passengers alone, across the river, and your petitioner should be assured of the possession and control of such portions of the banks of the river, and of the land adjacent thereto, as might be set apart for those purposes, so long as the said railroad continued to exist and was kept in operation, and such possession and control was necessary for the successful prosecution of the business of the said railroad, and would sell him at a fair price the square of ground, the property of the city of New Orleans, marked 27 A on the surveys of the city, bounded by Notre Dame, Girod and Water streets, and the projected line of Pilie street, with the riparian rights attached to it, so that with the said square and with the two other squares already owned by him, bounded re-
737 spectively by Front, Delta, Notre Dame, and Girod streets, and by Delta, Water, Girod, and Notre Dame streets, he would have space enough for the erection of the depots and other buildings required for the accommodation of freight and of the cars and railroad tracks to be employed and used in its transportation, and for other purposes connected with the successful carrying on of the business of the said railroad.

That on or about the 29th day of June, 1869, through his agents, Chas. A. Whitney & Co., petitioner addressed a communication to the mayor and members of the common council of the city of New Orleans, a copy of which is herewith filed, marked "B," in which your petitioner informed them of his being ready and willing to make the said improvements in a reasonable period of time, at his own expense, if the city of New Orleans would sell him the said square of ground, with the riparian rights attached to the same, and would accord to

him the rights and privileges with respect to the possession and control, for the purposes indicated, of the
738 portion of the river front of the city of New Orleans, beginning at a point one hundred and thirty-five feet below the lower line of Girod street and extending one hundred and thirty-five feet above the upper line of Notre Dame street, and running back between lines parallel with Girod and Notre Dame streets, the upper portion of the same to Pilie street, and the lower portion to Water street, agreeably to the provisions of the act of the Legislature of the State of Louisiana, entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas, and Great Western Railroad Company," approved April 30, 1853, and to give effect to that act, with full power to enclose and occupy so set apart, for his exclusive use, in his capacity of successor of the said company in carrying on the business of the said railroad, in the same manner and with the same privileges as were granted to the New Orleans, Mobile, and Chattanooga R. R. Co. by the joint resolution of the Legislature of the State approved on the 6th day of March, 1869, and that
739 if the city sold him the said square and granted and ceded to him the said rights and privileges to be used under the provisions of the said act, approved April 30, 1853, as aforesaid, then your petitioner would relinquish all the advantages which resulted from the passage or ordinance No. 2890 or 2290, and No. 799, new series, or any other, in relation to the exercise or enjoyment of any right to the use of other portions of the river front of the city for ferry landings for the use of the New Orleans, Opelousas, and Great Western Railroad Company.

And your petitioner further represents that his said proposition to the city of New Orleans was considered by the council of New Orleans, that on the 6th day of July, 1869, the board of assistant alderman of the said city of New Orleans passed an ordinance, No. 1492, new series, in which, in order to carry out and give effect to the provisions contained in the said act of the Legislature of Louisiana, approved April 30, 1853, and March 15, 1855, as aforesaid, it was ordained by the common council of the city of New Orleans that the city of New Orleans agreed to sell and to convey and deliver to your petitioner
740 the said square of ground mentioned in the said proposition, and that, for the reasons set forth in the preamble to the said ordinance, the city of New Orleans granted and ceded to your petitioner in his capacity of owner and proprietor of the said railroad, for the purpose of establishing, constructing, maintaining, and operating a ferry or ferries as aforesaid, the exclusive right of landing on the said portion of the river front of the city of New Orleans, and to the exclusive use as aforesaid of the space extending back from said river front between parallel lines as aforesaid, on the lower portion of the same to Water street and

on the upper portion Pilié street, as fully detailed in the said ordinance No. 1492, new series, a copy of which is herewith filed, marked "C;" that the said New Orleans, Mobile and Chattanooga Railroad Company instituted a suit against the city of New Orleans in the fifth district court of the parish of Orleans, No. 738 of the docket of the said court, in which they alleged

741 that in virtue of a grant made to them by the State of Louisiana by the fifteenth section of an act entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana," approved February 17, 1869, the had the right to enclose and occupy the blocks of ground, parts of streets, and portions of levee in the said city of New Orleans bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street; that the said portion of ground known as "27 A," and bounded by Girod, Notre Dame, Water, and the continuation of Pilié street, was comprehended in said grant; that the city of New Orleans had received and was entertaining propositions for the purchase of the said property, and prayed for and obtained an injunction from the said fifth district court to enjoin and restrain the said city of New Orleans "from bargaining, selling, leasing, or in any wise alienating any of the property described in the said grant," as will be seen by reference to the petition filed in the said above-entitled suit, and of the order for injunction made thereon. And your petitioner further represents

742 that the said injunction was served upon the said city, and that afterwards, on or about the 13th of July, 1869, the board of aldermen acted on the said ordinance, and after amending the same as originally passed by the board of assistant aldermen, by providing that the mayor should not enter into and execute the contract provided for in the said ordinance until the said injunction should have been dissolved or set aside according to law, and declaring that in either event the said ordinance should be operative and binding from the date of its passage, and that it was the intent and design of the common council to suspend the binding force and effect of the said ordinance only until the said injunction is dissolved or set aside according to law, and upon no other contingency or condition whatsoever, the said ordinance was passed by the board of aldermen as amended; that the said amendment was concurred in by the board of assistant aldermen on the said 13th day of July, 1869; that the said ordi-

743 nance was approved by the mayor of the city of New Orleans on the 15th of July, 1869, and that the same was duly promulgated in the official journal of the city of New Orleans, on the 17th day of July, 1869.

And your petitioner further represents that by a public act passed before Selim Magner, notary public in and for the city

of New Orleans, on the 17th day of July, 1870, an authentic copy of which is herewith filed, marked "D;" your petitioner by his agent, Charles A. Whitney, declared that, whereas ordinance No. 1492, new series, appproved by his honor the mayor on the 15th day of July, ——, duly published in the official journal of this city; the Commercial Bulletin of the city of New Orleans agree to sell unto petitioner certain land in front of this city, for a stipulated price, and under the clauses and conditions contained in said ordinance, a published copy of which was taken from the official journal, and was thereto annexed as part of the said act; and whereas the said Whitney, for and in the name of your petitioner, was desirous of accepting said ordinance, and to cause your petitioner to comply with all and singular the clauses and conditions therein contained, therefore he the said Whitney,
744 for, and in the name of your petitioner, was desirous of accepting said ordinance, and to cause your petitioner to comply with all and singular, the clauses and conditions therein contained, therefore, he, the said Whitney, in his aforesaid capacity, and, in the name of your petitioner, did accept the said ordinance in all its contents and details, and did thereby bind your petitioner to comply faithfully with all and singular the conditions and clauses and stipulations therein contained, that by a letter address to the Hon. J. R. Conway, mayor of the city of New Orleans, dated on the 20th of July, 1869, by Charles A. Whitney & Co., petitioner's agent, and which was accompanied by an authenticated copy of the said public act, and which said said letter (a copy of which is herewith filed, marked A) and said authentic copy were delivered to the said mayor, on or about the said 20th of July, 1869. The said city of New Orleans was informed of your petitioner's acceptance of the said ordinance; and your petitioner now avers that by the said proposition made, as aforesaid, by your petitioner, to the said city of New Orleans, and the passage of the said ordinance, No. 1492, by the said city of New Orleans, and the acceptance of the said ordinance by your petitioner then, was a complete, valid, and binding contract between the said city of New Orleans and your petitioner, by means of which the said city of New Orleans agreed and promised to sell and convey and deliver to your petitioner, the said square of ground, the property of the city of New Orleans, marked "26 A," on the surveys of the city, as aforesaid, on the said terms and conditions, and that all the right, title, and interest of the said city of New Orleans, in and to the said square of ground, were then, and are now, vested in your petitioner, dependent only upon the condition that the said injunction shall be dissolved or set aside, and upon no other.

And your petitioner further represents that the attorney-general of the State of Louisiana, assuming to act for the State, on, or about the 17th day of July, 1869, filed a petition entitled a

"petition and information" in the said above-entitled suit, in aid of the said New Orleans, Mobile and Chattanooga Rail-
746 road Company, applied for and obtained an injunction prohibiting the said city of New Orleans from executing the said proposed sale of the said square, 27 A, to pettioner, as will be seen by reference to the said petition and information now on file in the said above-entitled suit.

And your petitioner further represents that the said rights acquired as aforesaid by him as the owner and possessor of the said railroad, and of the said franchises, to maintain, run and operate the said railroad for the transportation of freight and passengers, and to locate, construct, maintain, and operate a ferry or ferries from the depot property appertaining to the said railroad, on the right bank of the Mississippi river, to one or more points within the corporate limits of the said city of New Orleans, and to the right of landing for the said ferry or ferries at the said depot property on the right bank of the Mississippi river, and at one or more points within the corporate limits of the said city of New Orleans, on the left bank of the
747 Mississippi river, and of using the space allowed by the said city for the use of the said railroad, result from and are vested in your petitioner under and in virtue of the act entitled "An act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 22d, 1853, and of the act entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas and Great Western Railroad Company," approved April 30, 1853, to which said acts reference is prayed, and to the ordinances of the said city of New Orleans, No. 2890 or 2290, approved July 10th, 1855, and No. 799, new series, approved December 16, 1867, and No. 1492, approved on the 15th of July, 1869, copies of which are herewith filed, marked "E" and "F," which said acts constituted a contract between the said New Orleans, Opelousas and Great Western Railroad Company and the State of Louisiana, and which said ordinances, No. 2890 or 2290, and 799, constituted a contract between the said city of New Orleans and the said New Orleans, Opelousas and Great Western Railroad Company, and your peti-
748 tioner, as the successor of the said company, entered into and made under the authority of the said acts of the Legislature, all of which said rights are protected by section ten of the first article of the Constitution of the United States, which prohibits any State from passing any law impairing the obligation of contracts, and cannot be affected or in any way impaired by any subsequent legislation of the Legislature of Louisiana, or of the city of New Orleans.

And your petitioner further represents that the said portion of ground marked "27 A," on the surveys of the city of New Orleans, as aforesaid, was the private property of the said city of

New Orleans, and makes part of a larger portion of ground formerly known as the batture, and lying between Delta street, as now represented in the maps of the city, and the Mississippi river, the title to which was vested in the city of New Orleans, in full and absolute ownership, under and by virtue of the cession and relinquishment by the former owners thereof, made in favor of municipality No. two, before Hilary B. Cenas, a
749 notary public in said city of New Orleans, on the 30th day of June, 1851, an authentic copy of which act is herewith filed, marked G; that the right of the said city of New Orleans, in and to the said property, and every part of the same, under the said public act, was protected by the tenth section of the first article of the Constitution of the United States, and that the said city of New Orleans was in law, entitled to sell, or otherwise alienate and dispose of the same in the same manner, and so as to transfer all the right, title, and interest therein, to any third person, as fully and completely as any individual or private owner of property whatsoever.

And your petitioner further represents that the said New Orleans, Mobile and Chattanooga Railroad Company, on the night of the 17th of July, 1869, entered upon, and took forcible possession of the said portion of ground marked "27 A," on the surveys of the city as aforesaid, and are now in the actual possession of the same.

And your petitioner further represents that the said New Orleans, Mobile and Chattanooga Railroad Company,
750 pretend to have a right to occupy, and make use of, the said portion of ground marked "27 A," under grants made to the said company by the Legislature of the State of Louisiana, in the acts referred to, and described in the petition filed in the said suit as aforesaid, and that the said pretension of the said company as asserted and maintained by the the Attorney General of the State of Louisiana, assuming to act for the State, and in aid of the said company, under and in furtherance of the said grants, made by the State of Louisiana in the said acts.

And your petitioner now avers that the State of Louisiana had no right, title, or interest as owners in and to the said portion of ground represented and known as "27 A" in the surveys of the said city of New Orleans, or to any part thereof; that the Legislature of the State of Louisiana had no right or power to pass any law impairing the obligation of contracts, or to pass any law to divert any rights vested in the owners of property in any other way than to authorize property being taken for pur-
751 poses of public utility and for adequate compensation, by the exercise of the right of eminent domain, by proceedings provided for and had in due course of law; that the said grants made to the said New Orleans, Mobile and Chattanooga Railroad Company by the State of Louisiana, in the said acts of

the Legislature of the said State, were and are absolutely null and void, snd neither vested or could vest in the said New Orleans, Mobile and Chattanooga Railroad Company any right, title, or interest in or to the said square "27 A," or to use of the same or any part thereof, because of the want of any right, title, or interest in the State of Louisiana as owner of the said square "27 A," or any part thereof, or of the right to the use of the same; and because the said acts containing the said grants were made and passed in violation of section 10 of the first article of the Constitution of the United States; and because they were made and passed in violation of article 110 of the constitution of the State of Louisiana, adopted in the year 1868, and prior to the passage of the said acts, which declare that "no re-
752 tractive law or laws impairing the obligation of contracts shall be passed, nor vested rights be diverted, unless for purposes of public utility and for adequate compensation."

And your petitioner further represents that neither the said New Orleans, Mobile and Chattanooga Railroad Company, or the State of Louisiana, through the Attorney General, who assumes to act for the same, had any right to interfere and intermeddle with the said transactions between petitioner and the said city of New Orleans, and to apply for and to obtain the injunction issued as aforesaid, in the said above-entitled suit; that the said injunctions were improvidently granted; that they are injurious to your petitioner, and that the same ought to be dissolved and set aside. Wherefore your petitioner prays that he may have leave to intervene in the above-entitled suit. And he further prays that the said New Orleans, Mobile and Chattanooga Railroad Company, and the Attorney General of the State of Louisiana, assuming to act for the State, may be served with copies
753 of this petition, in order that they man answer the same in the legal delay, and that after legal proceedings had the said injunction granted in the said case may be dissolved and set aside.

MILES TAYLOR, *Attorney.*

Answer of City of New Orleans to intervention of Charles Morgan. Filed August 6, 1870.

State of Louisiana, Parish of Orleans, Eighth District Court.

THE N. O., M. & C. R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 4.

And now before the court comes the city of New Orleans, and for answer to the petition of intervention filed herein by Charles Morgan, and by way of reconventional demand in favor of said city of New Orleans, and against said Charles Morgan, this apperer shows:

That on or about the 20th day of September, A. D. 1820, a certain act was entered into by and between Edward Livingston, together with other riparian proprietors and certain citizens of New Orleans, wherein and whereby the
754 batture or levee being in suburb St. Marie, and the accretions thereafter to become attached to the same, were dedicated to public use, and the purposes of business and commerce, and upon the express understanding and condition that the same should thereafter remain and continue a *locus publicus* out of commerce, and not be effected by any adverse claim or grant which might be set up against the same.

That for many years anterior to the authentic act above referred to, and subsequent to the same, and prior to the passage of an act to incorporate the New Orleans, Opelousas, and Great Western Railroad Company, approved April 22d, 1853, and an act entitled "An act supplementary to an act to incorporate the New Orleans, Opelousas, and Great Western Railroad Company," approved April 30th, 1853, and prior to the adoption of city ordinances Nos. 2290, 799, new series, and 1492, new series, hereinafter referred to, certain riparian proprietors, owning property in the faubourg St. Marie aforesaid, many of whom were citizens of the United States, without any particular form
755 or ceremony, converted the entire batture, forming the front of said city, and said suburb, into a *locus publicus* and set apart the same for the use of the public, composed almost entirely of citizens of the United States, upon the condition imposed by law; that the batture thus informally dedicated should remain, and continue to be solely appropriated to that purpose.

That the batture or levee thus dedicated to the public use embrace the following property, grounds and real estate, to wit:

All that portion of the port of New Orleans from the beef market, at the foot of St. Ann street, in the second district, fronting on the Mississippi river, to the wharf of the New York mail steamers, the same being one hundred and fifty feet on the line of the river, and extending back in straight lines to Levee street.

Also, an additional one hundred and twenty-five feet on the Mississippi, commencing on the lower side of said ferry landing at St. Ann street, and extending down the river.

Also, the square of ground marked "27 A" on the sur-
756 veys of the city bounded by Notre Dame, Girod, and Water streets, and the projected line of Pilie street, together with that portion of the river front of the city of New Orleans, beginning at a point one hundred and thirty-five feet below the lower line of Girod street, and extending one hundred and thirty-five feet above the upper line of Notre Dame, and running back between lines parallel with Girod and Notre Dame streets,

the upper portion of the same to Pilie street, and the lower portion to Water street.

That the aforesaid batture, particularly that portion thereof hereinabove particularly described, for more than thirty years prior to the passage of the aforesaid acts by the State of Louisiana, and the adoption of the aforesaid ordinances by the common council of the city of New Orleans, and up to and ever after the time of such passage and adoption was used and enjoyed by the public, composed almost entirely of citizens of the United States, as a *locus publicus*, and in the interests of business and commerce; and that the same is now needed for public
757 use, and to meet the exigencies and demands of the business and commercial relations of the city of New Orleans, and the wants of the community at large.

And this appearer further shows that the intervenor, Charles Morgan, pretends that the aforesaid act of the legislature, approved 22d day of April, 1853; the act supplementary thereto approved April 30th, 1853; the ordinance of the city council of the city of New Orleans, No. 2290, approved July 10th, 1855; ordinance No. 799, new series, approved December 16th, 1867; and ordinance No. 1492, new series, approved 15th July, 1869, were contracts on the part of the State of Louisiana and the city of New Orleans, and had the effect of giving and granting unto the New Orleans, Opelousas, and Great Western Railroad Company, and through said company to the said Charles Morgan, the right to the sole and exclusve use of all the grounds, property, and real estate hereinabove set forth and fully described with the privilege of enclosing the same, and by that means, and otherwise, to prevent the use and enjoyment of the said property, grounds, and real estate, and every part thereof by the public.

758 And this appearer further shows that the State of Louisiana had no right, title, interest, or claim, as owner, to any portion of the property, grounds, or real estate aforesaid, and had no right to pass any law divesting any of the rights of the owners of such property, or of the public, in any other way than to authorize property to be taken for purposes of public utility and for adequate compensation, by the exercise of the right of eminent domain; that if it be true that the several acts of the Legislature of Louisiana, hereinabove referred to, did have the effect of bestowing upon the New Orleans, Opelousas and Great Western Railroad Company, or upon said Morgan, the right to inclose and solely to use and enjoy the land, property, and real estate aforesaid, and referred to in the aforesaid ordinances 2290, 799, and 1492, that then, and in that event, the said acts and the grants and privileges therein bestowed were made, passed, and given in violation of Section 10, Article 1, of the Constitution of the United States; Section 1, Fourteenth Amendment to

759 the Constitution of the United States; section 20, article 6, constitution of Louisiana, adopted in 1812; article 109, constitution of said State, adopted in 1845; article 105, constitution of said State, adopted in 1852; article 1091, constitution of said State, adopted in 1864, and article 110, constitution of said State, adopted in 1868; and are therefore absolutely null and void.

This appearer further says that the aforesaid ordinances, 2290, 799, and 1492, give to intervenor possession of a *locus publicus*, the right to the use and enjoyment of which is in the public, composed almost entirely of citizens of the United States, and does thereby and therein interfere with rights vested in private individuals, and in the public, the greater part of whom are citizens of the United States; and for this and other reasons the several ordinances aforesaid, and the grants and privileges therein pretended to be conferred, were made, passed, and given in violation of the aforementioned provisions of the Federal and State Constitutions, particularly Section 1, Fourteenth Amend-
760 ment to the Constitution of the United States; Section 10, Article 1, of the Constitution of the United States; article 105, constitution of the State of Louisiana, adopted in 1852; article 109, constitution of said State, adopted in 1864, and article 110, constitution of said State, adopted in 1868, and are therefore absolutely null and void, and of no force or effect.

And this appearer further shows that the corporate authorities of the city of New Orleans, before and at the time of the adoption and approval of the three several ordinances hereinbefore particularly referred to, were without the power and authority to make the grants or concessions, or to confer the rights and privileges by such ordinances embraced; that the pretended transfer to the New Orleans, Opelousas and Great Western Railroad Company, and to the said Charles Morgan, proposed in the several ordinances aforesaid, was made for a consideration grossly inadequate; that the value of the property, rights, and privileges by said ordinances pretended to have been conveyed, is more
761 than double the sum alleged to be given therefor, and upon a fair public sale the property would have commanded far more than the sum proposed and the contract pretended to have been entered into, under the said ordinances, is impeachable for lesion; that, as a donation, the pretended contracts and agreements under the said ordinances were not warranted by law or public interests; that it appears upon the face of ordinance No. 1492 that the corporate authorities of the city of New Orleans were then disabled by a writ of injunction issuing from the fifth district court of the city of New Orleans from making a disposition of a portion of the said property, and that the ordinance hereinabove last mentioned was adopted during the pendency of a litigation relative thereto and while the

title was in controversey; that the aforesaid ordinances or one or more of the same, were precipitately carried through the common council of the city of New Orleans, when the right to office in such a body, on a part of a number of
762 the members, was under contestation as intruders into the corporation, and as to whose right to office a judgment unfavorable to such members has been rendered by the fifth district court of the parish of Orleans, that the claim and demand of defendants to be protected in alleged rights under ordinances 2290 and 799, is a full legal and equitable aknowledgment of no right or claim under 1492, depriving him of every privilege, under that ordinance, without according him any right under ordinances 2290 and 799, and that by reason of the want of power or authority on the part of the aforesaid corporate authorities, the inadquacy of the pretended consideration, the want of legal requisites to constitute a valid donation, the disability arising from the pendency of judicial proceedings and the judicial acknowledgment by the said Charles Morgan, the said ordinances and each and every one of them.

And this appearer further shows, that the said Charles Morgan, combining and confederating together with other
763 persons, as yet unknown to this appearer, but whose names this appearer prays, when discovered, may be inserted herein as defendants and parties to this suit, with proper and sufficient words to charge them in the premises, with no other authority than the aforesaid unconstitutional and invalid acts of the Legislature of the State of Louisiana, and ordinance of the city of New Orleans, will take and keep exclusive use and benefit, the property, grounds, real estate, batture, and levee, hereinabove particularly described and set forth, that the said Charles Morgan will enclose the same, and will prevent the public, the residents and citizens of the city of New Orleans, from using and enjoying the same as a *locus publicus*, and for the purposes intended, at the time of the dedication thereof, as hereinabove is more particularly averred and set forth, and that this appearer, and the public, composed almost entirely of citizens of the United States, will suffer great and irreparable injury if said Charles Morgan be not restrained from proceeding further in vio-
764 lation of the just rights of this appearer, and of the public as aforesaid, and that this appearer is informed and believes that she is entitled in the premises to the remedial writ of injunction, to be issued out of this honorable court, to restrain the said Charles Morgan, his officers, agents, or employees from so proceeding.

Wherefore this appearer prays that upon this demand in intervention judgment be rendered in favor of this appearer and against said Charles Morgan.

She further prays that the said Chas. Morgan be cited to ap-

pear and answer this demand in reconvention, that in due course of law judgment may be rendered in favor of this appearer, and against said Morgan; and that the said Charles Morgan may be restrained and enjoined from taking or keeping sole and exclusive possession of the following-described property, grounds, real estate, batture, and levee, to wit:

All that portion of the port of New Orleans from the beef market, at the foot of St. Ann street, in the second district, fronting on the Mississippi river, to the wharf of the New York
765 mail steamers, the same being one hundred and fifty feet on the line of the river, and extending back in straight lines to Levee street.

Also an additional one hundred and twenty-five feet on the Mississippi, commencing on the lower side of said ferry landing at St. Ann street, and extending down the river.

Also the square of ground marked "27 A" on the surveys of the city, bounded by Notre Dame, Girod, and Water streets, and the projected line of Pilie street.

Together with that portion of the river front of the city of New Orleans beginning at a point one hundred and thirty-five feet below the lower line of Girod street, and extending one hundred and thirty-five feet above the upper line of Notre Dame street, and running back between lines parallel with Girod and Notre Dame streets, the upper portion of the same to Pilie street, and the lower portion to Water street, and every part or portion of the same, to the injury or detriment of the rights of this appearer, as hereinabove set forth; and from erecting upon or in any way or manner using or occupying
766 the said portion of ground, or any part thereof, in violation of this appearer's rights, as hereinabove set forth, and from disturbing or interfering in any way or manner with appearer or the public in the free use and enjoyment thereof, and every portion of the same, as a *locus publicus;* and that said Chas. Morgan be enjoined and required to permit the said property, grounds, real estate, batture, and levee, and every part of the same, to remain free and open for public use and for the exigences and demands of the business and commercial relations of the city of New Orleans and the wants of the community at large, so that the free and unrestricted use of said real estate, grounds, property, batture, and levee by the public, the exigencies and demands of business, the commercial interests of the city of New Orlens, and the wants of the community at large shall not in any way or manner, directly or indirectly, be impaired, impeded, hindered, or molested by said Charles Morgan, his agents or employés.

767 And this appearer further prays that she may have such other and further relief in the premises as the nature and

circumstances of this case may require, and as to your honor may seem meet, right, and proper.

(Signed) GEO. S. LACEY,
City Attorney.

768 *Supplemental answer and demand in reconvention of the City of New Orleans. Filed October 11th, 1870.*

Eighth District Court for the Parish of Orleans.

N. O., M., and C. R. R. Co.
vs.
City of New Orleans. } No. 4.

And now before this court comes the city of New Orleans, and for further and supplemental answer and demand in reconvention against [———] venor, Charles Morgan, this appearer shows:

[———] in the original answer and demand in reconvention the title of the [———] New Orleans of the real estate and ground situated above and be [———] street, and embracing the property covered by ordinances [———] N. S., and 1492 N. S., is not fully set forth and designated, [———] his appearer desires in that respect to correct the original [———] reconventional demand.

[———] appearer shows unto the court—

That all that portion of real estate or ground claimed by
769 intervenor, situated above Canal street, and embraced by ordinance 1492, forms a part of the batture lying in the old Fauborg St. Marie, and that on or about the twentieth day of September, A. D. 1820, a certain act was entered into by and between Edward Livingston and other riparian proprietors and the city of New Orleans, wherein and whereby the entire alluvion or batture in front of the aforesaid suburb St. Marie, and the accretion thereafter to become attached to the same, were dedicated to public use and the purposes of business and commerce, and upon the express understanding and condition that the same should thereafter remain and continue a *locus publicus*, out of commerce, and not to be affected by any adverse claim or grant which might be set up against the same.

That for many years anterior to the authentic act of dedication above referred to, and more than fifty years previous to the passage of the acts of the Legislature of the State of Louisiana, referred to in the interventor's petition, certain riparian proprietors owning property in the said Fauborg St. Marie without any particular
770 form or ceremony, converted the entire batture in front of such suburb into a *locus publicus*, and set apart for the use of the public, composed almost entirely of citizens of the United States, upon the condition that the batture thus inform-

ally dedicated should remain and continue to be solely appropriated to that purpose.

And this appearer further shows that the aforesaid batture above Canal street, for more than fifty years prior to the acts of the Legislature aforesaid, was used and enjoyed as a *locus publicus*, and in the interest of business and commerce; and that the same, and particularly that portion thereof referred to in plaintiff"s petition, is now needed for public use and to meet the exigencies and demands of the business and commercial relations of the city of New Orleans, and the wants of the community at large, composed mostly of citizens of the United States.

Further this respondent says that all that portion of the real estate or ground claimed by intervenor under ordinances 2290 and 799, and lying below Canal street, forms part of the batture lying in front of the "Old City of New Orleans," as this
771 respondent will show upon the trial of this cause.

That on the sixth day of September, 1717, a charter was granted by the King of France to a corporation styled the "Western Company," that under the auspices of the said company the ground where the old city of New Orleans now stands was selected as a place for the principal settlement of the province, and the foundation of the city was laid; and that in 1724 and 1728 all the batture lying in front of the old city of New Orleans was laid off as a quay, and thus and otherwise was dedicated as a *locus publicus* and as common property, to the use of which all the inhabitants of the city of New Orleans and even strangers became entitled.

That upon the original plan of this city, as made by the King of France at its foundation, in the years 1724 and 1728, the aforesaid batture lying in front of the old city of New Orleans, and extending from the front row of buildings down to the river's edge, was recognized as a *locus publicus;* that such batture
772 was not only needed as a place to be used in common, but has been in the uninterrupted possession and actual enjoyment of the inhabitants of the city of New Orleans, composed almost entirely of citizens of the United States, and strangers, as a place of public use, from the years 1724 and 1728 down to the commencement of this suit; and that lots and squares of ground abutting upon such batture have been sold and bought, and buildings have been erected on said squares and lots in reference to the said batture, then being and forever after remaining a place dedicated to common use.

And this respondent further says that the enjoyment of the grants and privileges set forth and contained in the several acts of the Legislature, and in the several city ordinances aforesaid, will prevent the use of the batture by the public as a *locus publieus* and highway, will destroy the object of the dedications as hereinabove set forth, and will give to intervenor the exclusive use of ground,

the use of which alone belongs to and is now needed by the inhabitants of the said city of New Orleans and others.

And this respondent, further answering, says that the
773 State of Louisiana had no right, title, interest, or claim as owner to any portion of the property, ground, or real estate referred to in intervenor's petition, and the city of New Orleans had no right or title thereto which could be divested, and had no right to pass any law or ordinance divesting any of the rights of the owners of said property or of the public in any other way than to authorize property to be taken for the purposes of public utility, and for adequate compensation by the exercise of the right of eminent domain.

That according to the averments of intervenor the acts of the Legislature particularly referred to in his petition, and the enjoyment of the grants and privileges therein, and by the aforesaid ordinances pretended to be granted and conferred, will give plaintiff the ownership and crontrol of certain property belonging to this respondent and others without compensation, and will, moreover, give to them the possession of a *locus publicus* the right to the use and enjoyment of which is in the public, composed almost entirely of citizens of United States, and will thereby
774 and otherwise interfere with and impair rights vested in and contracts in favor of said owners and the public, composed almost entirely of citizens of the United States; that for these and other reasons the several acts of the Legislature of the State of Louisiana and ordinances of the city of New Orleans, aforesaid, and the pretended grants and privileges to the said Charles Morgan, as set forth in his petition in intervention, were made, passed, and given in violation of Sec. 10, Art. 1, of the Constitution of the United States; first section of the 14th amendment to the Constitution of the United States, Sec. 20, Art. 6 of the constitution of Louisiana, adopted in 1812; Art. 109, constitution of said State, adopted in 1845; Art. 105, constitution of said State, adopted in 1852; Art. 109, constitution of said State, adopted in 1864; and Art. 110, constitution of said State, adopted in 1868, and are therefore absolutely null and void, and without effect.

Wherefore appearer prays for leave to file this, his supplemental answer and claim in reconvention, that the same be taken
775 as explanatory, and as enlarging the averments and allegations of the original answer and reconventional demand, and that judgment be rendered in favor of this appearer and against the said Charles Morgan, as prayed for in the original answer and demand in reconvention, with costs and general relief.

(Signed) GEO. S. LACY,
City Attorney.

Order.

Let this supplemental answer and demand in reconvention be filed as prayed for.

New Orleans, October 11, 1870.

(Signed) HENRY C. DIBBLE,
Judge.

Answer and agreement of the City of New Orleans. Filed January 9th, 1871.

Eighth District Court for the Parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* THE CITY OF NEW ORLEANS.

To the petition filed by the plaintiff in the above-entitled suit, the city of New Orleans appears, and, for answer, denies all and singular the allegations in said petition contained, except so far as may be hereafter admitted.

(Signed) GEO. S. LACY,
City Attorney.

On the validity of these grants are as follows: These decisions were made prior to the institution of the suit, removed to the United States circuit court, in which the appeal in the case now here was taken.

No. 3692. 26th Louisiana Ann., p. 517.

The New Orleans, Mobile and Chattanooga Railroad Company *versus* The city of New Orleans *et als.*

Printed record, pp. 51 *et seq.*:

This controversy arises out of the acts 19th March, 1868, 17th February, 1869, and 21st February, 1870, granting to the New Orleans, Mobile and Chattanooga Railroad, for passenger and freight depots, a space of ground equal to about four squares on the batture or levee in front of the city of New Orleans, between Calliope and Canal streets, and also granting the right to lay tracks and occupy as a railroad a strip of land extending down the levee to Elysian Fields street, and out said street to Claiborne street and beyond it. The plaintiffs took possession and enjoined the city of New Orleans and other parties to the interfering with them in any manner.

The city denied the validity of the grant on the ground that the State had no right, title, or interest in the property; and alleged that the batture and street in question belonged to it, and the State could not make the divestiture or deprive New Orleans and its inhabitants of the use of said public place and highway without the exercise of the right of eminent domain, and this re-

spondent further says that the construction of the New Orleans, Mobile and Chattanooga railroad by the route contemplated through the city and the running therein passenger and freight trains propelled by steam engines or locomotives, and the enjoyment of the grant and the privileges set forth and contained in the several acts referred to, will prevent the use of the batture and Elysian Fields street as a *locus publicus* and a highway, will destroy the dedications thereof to the public, and will give
777 the plaintiffs the exclusive use of property which belongs to and is needed by New Orleans and its inhabitants.

The court maintained the demand of the plaintiffs, and perpetuated the injunction. The city of New Orleans appealed.

By consent of parties the issue as to the Pontchartrain Railroad Company, joined as co-defendants herein, is reserved from the present decision, and as to them the case is indefinitely continued.

The question is, had the General Assembly *had* the right to grant the New Orleans and Chattanooga Railroad Company, for freight and passenger depots and tracks, the property in controversy? If the fee or title to the soil belonged to the State, and its use as public places ceased to be necessary, of course the State, as the proprietor, could make the grant. But it is shown that the State had no title watever to the property, and it is proved beyond question that its use is necessary for the public. The title of the city to this property is as clear and well established as the title of any political corporation can be to common property, or property dedicated to public use. That portion of the batture given for depots between Calliope and Canal streets, was undoubtedly the property of Livingston and the other riparian proprietors who conveyed it to New Orleans and dedicated it to public use in the act of donation or compromise of 1820. This cession and dedication was recognized and approved by the legislature.

The batture in front of the old city was reserved for and dedicated to public use when the city was laid out in 1824, and since that time it has been used as a levee or quay. If the fee or title to the soil remained in the sovereignty of France it passed to the United States by cession, because France ceded forever and in full sovereignty the Territory of Louisiana, with all its rights and appurtenances. The ground in question therefore passed to the United States if it was public property, and it was not transferred to the State of Louisiana when it was admitted into the Union, because the convention which framed the constitution acceded to the terms upon which Congress admitted the State into the Union, and by an ordinance forever renounced all right
778 or title to the waste or unappropriated lands. This was expressly decided in the case of De Armas, 5 L., 207. In a controversy between New Orleans and the United States in re-

lation to the ground in question it was decided in 1836, by the highest tribunal of the land that the United States was without title. (10 Peters, 662.)

That Elysian Fields street was conveyed to New Orleans and dedicated to public use by Bernard Marigny, and has been occupied as a public highway since 1805, is not disputed. It is shown that the occupation of these public places by the plaintiffs and the running thereon of passenger and freight trains propelled by locomotives, prevent the use and enjoyment of them by the public, and to a great extent defeat the object of their dedication. The street and quay in question were not granted to New Orleans and dedicated to public use to be owned and occupied by the Chattanooga Railroad. The witness, Captain Leathers: "I am engaged in the steamboat business, commanding str. Natchez; I have been engaged in the business above thirty-five years; during the last thirty years have been making weekly landings at the port of New Orleans, discharging cargoes of cotton principally. I am very familiar with the river business which is now being done, and which has been done for many years past, on the levee of this city. From the wood-work or wharves back to the houses that line the levee—say from Calliope down to Canal street—there is scarcely room enough to do the river business, by which I mean the business of receiving and shipping freight by the river Mississippi.

"I am very familiar with the levee from Canal down to Jackson square, which is between St. Peter and St. Anne streets. There is not more than enough of levee between Canal street and Jackson square and the houses that front the river, and the river itself, to do the business which is now carried on by steamboats and sea-going vessels.

"I am familiar with the tracks of the Chattanooga railroad as now laid, say from Calliope street down to Jackson square; the effect of the Chattanooga railroad, with its passenger and freight trains and many tracks, is to leave the ships and steam-
779 boats without one-third room enough to do their business.

The passing to and fro of those trains and carrying on the business of the road would, in my opinion, have the effect of giving to the road almost if not entirely the exclusive use of the batture or levee. There is constantly through the day and all hours of the day a large number of horses and mules engaged in transporting the river freight to and from the levee to the steamboats and ships and sea-going vessels, and I think the passing of the locomotive up and down the levee would seriously interfere with the teams and drivers; there are frequently instances of those animals being frightened and running away endangering their lives, as also the lives of others. I have seen the cars stopped at the front of my boat several times, entirely blockading my gangway, and stopping my hands from putting out freight during that

time; the road has left no room scarcely between the track and the boats. I am not the only one that has been subjected to this kind of inconvenience; there have been several boats, and many of them. As the business of the road increases the river business will be subject to a corresponding increase of inconvenience, amount almost to an entire deprivation of the use of the levee. The river business is now almost entirely blockaded up from Jackson square to Custom-house street, and from there nearly ruined by the railroad up as far as St. Joseph street, where the Chattanooga road comes to the river and occupies the entire front. To my knowledge the business of the river has been so obstructed by the use of the batture by the Chattanooga Railroad Company that cargoes of cotton at Vicksburg have been shipped to Savannah, and many owners have shipped their cotton to other ports which otherwise would have come to New Orleans. In my opinion one-half of the sugar crops will go up the river and not land here on that account. The use of the batture by the road as laid down is tantamount to a monopoly of the batture." The testimony of this witness is corroborated by that of a number of other witnesses, and indeed the truth thereof is not controverted.

If a political corporation can be the owner of property, of which there can be no doubt, it alone can exercise the right
780 of disposition over its property, because the right of disposition is an essential element of perfect ownership. If the State can grant the property of New Orleans, as attempted in the case before us, New Orleans would cease to be the owner of its own property, because it is the owner who has the exclusive right freely to dispose of his property.

Undoubtedly the State can exercise the right of eminent domain and take for public purposes the property of political corporations as well as the property of individuals upon paying the owners the value of the property so taken. But that is not the controversy here. The question is, can the State give the property of New Orleans to the Chattanooga Railroad Company? We think not. But it is contended that, as the grounds in controversy were dedicated to public use, therefore they are a part of the public domain of the State, which can be alienated by it. This is a fallacy. The fee or title was never in the State; therefore these public places form no part of the public domain of the State, and, as we have said, cannot grant what it does not own.

The property of the city dedicated to public use is as much its property as any that it may acquire. Indeed, the streets, walks and quays are more useful and essential to the city and its inhabitants than other property, and they are inalienable by the State. "There can be no difference in principle between ground dedicated as a quay to public use and the streets and alleys of a town; and as to the streets, it may be asked whether the king could rightfully

have granted them. This will not be pretended by any one. And it is believed that the public right to a common is equally beyond the power of a sovereign to grant, unless he disposes of it under the power to appropriate property to national use, and then compensation must be paid." (New Orleans *vs.* United States, 10 Peters, 662.)

"The inhabitants of a town cannot be deprived of their streets, as the streets are essential to the enjoyment of their property; in other words, by closing the streets the value of the value of the buildings of the town would be greatly reduced, if not entirely destroyed. And if ground dedicated to public use, which adds to the beauty, the health, the convenience and the
781 value of town property, be arbitrarily appropriated by the sovereign to other purposes, is not the value of the property which has been bought and sold in reference to it greatly impaired? The value may not be reduced to the same ruinous extent as it would be to close the streets, but the difference is only in the degree of the injury, and not in the principle involved." (10 Peters, 662.)

If the State could grant part of the quays and street in question for depots and railroad tracks it could grant the whole; it could grant all the streets and public places, and entirely deprive the city of access to the river, and virtually make its inhabitants prisoners in their own houses. The grant to the plaintiffs differs from this only in the degree of the injury, not in the principle involved. If the State could make the grant it can authorize the inclosure of the tracks, as it did the space given for the the depots, and this would virtually close the port of New Orleans, because the enclosure of the tracks, extending most all along the entire front, would cut off communication with the river, and destroy the commerce of the city.

But is urged that the State can dispose of the property of New Orleans because it granted it corporate powers, and can at will, modify or abolish the charter. It is true the powers of government delegated to the city may be revoked and its charter abolished, but it by no means follows that the property of the corporation would pass thereby to the State.

"In respect to public or municipal corporations (says Mr. Kent) which exist only for public purposes, as counties, cities and towns, the legislature, under proper limitations, have the right to, change, modify, enlarge, restrain, or destroy them, securing however, the property for the use of those for whom it was purchased." (2 Kent, 305.)

Notwithstanding the power of the legislature over the city of New Orleans, its property is protected like that of any other person. (Story on the Constitution, sections 1393, 1399; 2 Peters, 380, 412, 413, 627, 657; 6 Cranch, 67, 134; 4 Hill, 144; 3 Dallas, 386; 8 Wend., 85; 11 Wendall, 56, 61, 63; Cooley on

Limitations, 486; 21 Penn., 147; 7 Wall., 289; 9 Cranch, 292; 5 Paige, 147; 11 Wend., 157; People ex rel. Failing *vs.*
782 Commissioners of Town Polantine, 53 Barbour; and 3 American Law Times Reports, page 6; Constitution, art. 110; Constitution of the United States, art. 1, section 10.)

In Darmouth College *vs.* Woodward, 14 Wheaton, Justice Story says: "It may also be said that corporations, such as towns, cities, and counties, may in many respects be subject to legislative control. But it will hardly be contended, in respect to such corporations, that the legislative power is so transcendent that it may, at its will, take away the private property of the corporation, or change the uses of its private funds, acquired under the public faith. Can the Legislature confiscate to its own use the private funds which a municipal corporation holds under its charter without any default or consent of the corporators? If a municipal corporation be capable of holding devices and legacies to charitable uses, as many municipal corporations are, does the Legislature, under our forms of limited government, possess the uthority to seize upon these funds and appropriate them to others uses, at its own arbitrary pleasure, against the will of the donors and the donees? From the very nature of our Government the public faith is pledged the other way? The truth is, the Government has no power to make a grant even of its own funds when given to a private person or a corporation for special uses."

The legislature certainly has no greater power that the sovereigns of France and Spain had to the batture or levee in question, and the Supreme Court of the United States held in the case of 10th Peters, referred to, where a part of the identical property was in controversy, that the public right to the common "was beyond the power of the sovereign to grant."

New Orleans or its inhabitants had therefore a right to the levee or quay which could not be defeated, and it was "beyond the power of the sovereign to grant" this property to any one long before Louisiana became a State, and long before there was a corporate power to the city. The right to use the batture as a public place therefore exists, independently of the delegation of corporate power, and the modifying or withdrawing thereof,
783 can in no manner affect it. So, therefore, whether the State recalled the power of government delegated to the city or not is immaterial. The right of the inhabitants cannot be defeated, because the proof shows that the levee is absolutely necessary to public use, and the occupation thereof by the plaintiffs impairs and greatly defeats the objects of its dedication.

When a locus public becomes unnecessary for public use, of course the State can change the destination; it then becomes property in commerce, belonging to and subject to the will or disposition of the owner, whose rights were in abeyance pending the existence of the charge of servitude. But without the consent of the

donors and the donees, as in the case before us, the State cannot take the property dedicated to one purpose and apply it to another. It cannot take the batture granted to New Orleans for a quay, and to be used for the commerce of a river, and give it or any part of it to the Chattanooga railroad. As the State was utterly without title the grant to the plaintiffs conferred no right whatever to the property. It is useless to argue that the grant to the railroad only give a temporary use of the ground, and that it is subject to be recalled by the State. If the State had the right to make the grant the plaintiffs have the perpetual use of the property, which is equivalent to ownership, and the State cannot recall or in any manner defeat it, because of the provision of the Federal Constitution prohibiting a State from impairing the obligation of a contract.

It is also absurd to argue that the grant is only the exercise of an administrative power over these public places. A grant which confers exclusive use in perpetuity and subjects a thing granted to such debts and encumbrances as the grantee may see fit to impose cannot fairly be called the exercise of merely administrative power over a locus publicus.

The grant virtually changes the destination and passes the title (if the State had any to pass), because it puts the property in commerce and subjects it to the exclusive control and disposition of the plaintiff, makes it as the common pledge of their creditors liable to seizure under execution. Here, then, a considerable part of a locus publicus, proved to be essential to the existing object of the dedication, is granted to a private corporation in perpetuity, can be sold, mortgaged, and otherwise subjected to their debts, and yet it is gravely argued that this is not a change of destination and a grant of the fee, but is only a mode of regulating or administering a locus publicus which the State can rightfully exercise. The proposition is too absurd to require serious argument to refute it.

784

After carefully examining the record, and considering the authorities and able printed arguments presented by the eminent counsel engaged in this litigation, we have come to the conclusion that plaintiffs must fail in their demand, for two reasons, either of which seems to be fatal to their pretensions—

1st. Because the legislature could not change the destination of these public places, bring them into commerce, and subject them to the disposition of the plaintiffs while the object of the dedication continues, and it is proved that these public places are now essential to the uses for which they were dedicated to the public.

2d. Because if the State could have changed the destination it could not have granted the property; because the moment the charge or servitude in favor of the public is removed the property stands subject to the will and disposition of its owner, the

city of New Orleans, and, like all other property in commerce, it can only be disposed of by the owner.

As the State was not the owner the plaintiffs acquired no title by the grant. Much has been said of State sovereignty, and of the power of the State over the city, but we cannot in this controversy adjust the matter or determine the limits of this power, because the State is not a party, and because the solution of the question is not necessary in this case.

The State has simply passed by the grant whatever title it had to the plaintiffs, and this suit is simply a controversy for property between persons holding by different grants. In order, therefore, for the plaintiffs to recover they must show a title superior to the titles of those who granted the property to New Orleans and dedicated it to public use.

So, therefore, whether the public places in controversy can be administered by the State or the city, is a question that does not concern the plaintiffs. When it is ascertained, as we have,
785 that they acquired no title by the grant, their cause of complaint is ended.

It is therefore ordered that the judgment therein be annulled and the injunction be dissolved, and it is now ordered that there be judgment for the city of New Orleans, and that prayer in reconvention for an injunction be granted, and it is ordered that the plaintiffs be restrained and inhibited from occupying the property in controversy.

It is further ordered that plaintiffs pay costs of both courts.

(Signed) W. G. WILY,
JAMES G. TALIAFERO,
Assistant Justices.

I concur in the conclusions arrived at in the opinion pronounced by Mr. Justice Wily, and reserve the right to place the grounds of my concurrence in a separate opinion.

(Signed) P. H. MORGAN,
Ass't Justice.

Concurring Opinion of Mr. Justice Howell.

The plaintiffs' counsel states the question in this case thus:

"Has the State the power to make the grants of authority to the plaintiffs to lay tracks, construct depots, and to occupy the batture for the purposes set forth in the acts of the legislature relative to the corporation?"

I think the legislature may grant such authority as to "public places," but in my opinion a portion of the batture embraced in the grant has been reduced to the ownership of the city of New Orleans, and as to such portion the authority of the State is no greater than to any other property held in private ownership, so long as the municipal corporation exists.

I therefore concur in maintaining the injunction in favor of the city only as to the property or squares shown to belong to it, but in other respects I think the judgment of the lower court should be affirmed.

The chief justice dissented from this decree, maintaining the validity of the grants. His dissent is in 86th Ann., from p. 524 to 529.

786 On the rehearing granted in the case the following decree was pronounced:

New Orleans, Mobile and Chattanooga Railroad Company *vs.* The City of New Orleans, No. 3692.

Appeal from the Eighth District Court for the Parish of Orleans.

Mr. Justice Morgan:

The sole question presented in his case is, has the State the power to grant a railroad company the right of way through a street in this city? A thorough examination of this question has led us to the conclusion it has.

It is therefore ordered, adjudged, and decreed, that the judgment heretofore rendered by us be avoided, annulled and set aside, and it is now ordered, adjudged, and decreed that the judgment of the district court be affirmed with costs.

This decree thus affirmed in on pp. 383–4 of the printed record. It sustained the validity of the grants.

Dissenting opinion of Mr. Justice Wyly.

The State can grant the right of way to a railroad company, but the company can only get the land necessary for the tracks and depots by expropriation or purchase. I had occasion to express my views on the main question involved in the opinion of this court delivered on 19th May, 1873.

I therefore dissent in this case.

(Signed) W. G. WYLY.

I concur in the dissenting opinion of Mr. Justice Wyly.

(Signed) J. G. TALIAFERO,
Associate Justice.

In the other case between the same parties, on the question of the validity of these grants, the supreme court of the State decided (printed record, p. 7 et seq.) against their validity as follows:

No. 3701.

New Orleans, Mobile and Chattanooga Railroad Company
vs.
City of New Orleans *et als.* Charles Morgan, Intervenor.

787 WYLY, J. The question presented in this case is the same as that just decided, and for the reasons therein given—

It is ordered that the judgment herein be annulled, and the injunction be dissolved; and it is now ordered that there be judgment for the City of New Orleans, and that the prayer of the latter injunction be granted; *and it is ordered that the plaintiffs be restrained and inhibited from occupying the property in controversy.* It is further ordered that plaintiffs pay costs of both courts.

Superior District Court, Parish of Orleans.

New Orleans, Mobile and Texas R. R. Co.
vs.
City of New Orleans.

Supreme Court of the State of Louisiana.
Clerk's Office, New Orleans, May 4, 1874.

N. O., M. AND C. R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 3701.

Appeal from the Eighth District Court Parish of Orleans, No. 4.

Mr. Justice Howell delivered the opinion and decree of the Court, in the words and figures following, to wit:

On rehearing:

[For this opinion see *post*, side pages 862 to 879.]

796 [SEAL.] (Signed) M. P. JULIAN,
Deputy Clerk.

This is followed by the dissent of the Chief Justice, the dissent is on p. 486 to p. 491 of the 26th Ann.

Subsequent to these decisions, the suit now here on appeal was brought; the following are the pleadings and judgment in the instant case:

797 State of Louisiana, Superior District Court for the Parish of Orleans.

NEW ORLEANS, MOBILE AND TEXAS R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

Petition. Filed July 8th, 1874.

To the Honorable Jacob Hawkins, Judge of the Superior District Court, for the Parish of Orleans:

The petition of the New Orleans, Mobile and Texas Railroad Company, a corporation created by and under the laws of the State of Alabama, and permitted and authorized by the laws of the State of Louisiana to maintain its railway and exercise its rights within the State of Louisiana, respectfully shows:

That by the laws of Louisiana your petitioner has had conferred upon it the right to construct and maintain a railway within this State, and connecting the cities of New Orleans and Mobile, coming into the city of New Orleans by the way of Elysian Fields street; thence passing up the levee on the front of the city to Calliope street, and to construct in connection therewith, and for the uses thereof, certain freight and passenger depots, wood-yards, water-tanks, and other necessary buildings and appurtenances have been constructed at great cost, and have been maintained and used for the purposes of commerce to the great advantage of the trade of New Orleans.

That the right of your petitioner to maintain said railway tracks and necessary buildings and appurtenances has been recognized by the honorable the Supreme Court of Louisiana, in its opinions and decrees delivered *on the 4th of May*, 1874, in actions wherein the New Orleans, Mobile and Chattanooga Railroad Company was plaintiff and the city of New Orleans a defendant; by which opinions and decrees an injunction which had heretofore been ordered *by said court* against said railroad company was set aside, and the plaintiff allowed *to remain in possession* of Elysian Fields street and the levee below Canal street, and to maintain its railway therein *absolutely*, and to maintain its railway buildings, etc., on the levee and batture between Canal and Calliope street, and remain in peaceable use and enjoyment thereof, *subject to certain rights of the city of New Orleans to*
798 *be judicially ascertained*, as by the records of said suits Nos. 3692 and 3701 of said Supreme Court will more fully appear.

Now your petitioner shows that, being in lawful and peaceable possession as aforesaid of its said costly and valuable property, the city of New Orleans, through its officers and agents, on the 9th day of July, 1874, has tortiously, unlawfully, and violently made an attack upon the property of your petitioner in the

neighborhood of St. Joseph street, within the space hereinbefore mentioned, and has begun with a force of about one hundred men to demolish and destroy the fences, buildings, and other property of your petitioner, and is still continuing said unlawful and outrageous acts of violence, and will continue the same to the irreparable injury of petitioner, unless restrained by injunction.

That by said acts of outrage and violence by said defendants petitioner has suffered in damages, counsel fees, loss of business, and injury to property the sum of ten thousand dollars.

Wherefore, in consideration of the premises and the annexed affidavit, petitioner prays that a writ of injunction may issue herein according to law restraining and enjoining the defendant, and each and every one of its officers and employés, *from interfering in any wise with the property of petitioner in the space heretofore described on the* levee and batture between Canal and Calliope streets; from destroying or attempting to destroy any property of petitioner within the limits of New Orleans; from proceeding against petitioner or its property *except by due process in the courts of law*, and that after due proceedings had said injunction be made perpetual, and for citation of said defendant and judgment against it for ten thousand dollars and interest from judicial demand and all costs, and general and equitable relief.

(Signed) KENNARD, HOWE & PRENTISS,
A. MICOU,
Of Counsel.

799 *Writ of Injunction to be served on the City of N. O.*

State of Louisiana, Superior District Court for the Parish of Orleans.

NEW ORLEANS, MOBILE AND TEXAS R. R. Co.
versus
CITY OF NEW ORLEANS. } No. 26069.

State of Louisiana to the City of New Orleans, through L. A. Wiltz, Mayor, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the superior district court of the parish of Orleans, from interfering in any wise with the property of petitioner in the space, to wit, on the levee and batture between Canal and Calliope streets, and in the neighborhood of St. Joseph street, from destroying or attempting to destroy any property of petitioner within the limits of New Orleans, and from proceeding against petitioner or its property, except by due proceedings in the courts of law.

And you are so enjoined until the further order of this honorable court.

Witness the Honorable Jacob Hawkins, judge of our said court, at the city of New Orleans, this 8th day of July, in the year of our Lord eighteen hundred and seventy-four, in ninety-ninth year of the Independence of the United States.

(Signed) J. J. HANNAN,
D'y Clerk.

Superior District Court for the Parish of New Orleans.

NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY
versus
CITY OF NEW ORLEANS. } No. 26069.

And now before the court comes the city of New Orleans, and for answer to the petition herein filed and served upon her she denies each and every allegation therein contained, except such as may be hereinafter admited.

And for special answer this appearer further denies the existence of a judgment of the supreme court of the State of Louisiana, having the force and effect set forth and alleged in plaintiff's petition; and avers and declares in and by a decree
800 rendered in a certain suit in said court, and known and designated on the docket thereof as No. 3692, being the same judgment rendered to in plaintiff's petition, the court aforesaid merely recognized and intended to recognize a right of way, on the part of the New Orleans, Mobile and Texas Railroad Co., in and through certain public streets of the city of New Orleans.

Further answering, says that the Supreme Court of Louisiana, in and by a certain judgment therein rendered in the said suit of the New Orleans, Mobile and Chattanooga Railroad Company *vs.* City of New Orleans, known on the docket of said court as No. 3701, recognized and decreed the city of New Orleans to be the legal and equitable, the sole and only owner of all the property, real and personal, and all the rights, franchises, privileges, and servitudes claimed and demanded by the said city in the suit aforesaid; the said judgment which was founded on the same cause of action, with the same demand, and between the same parties, as is set forth in the petition filed in this case, this appearer now pleads against the plaintiffs herein as *res adjudicata.*

And this appearer further shows unto your honors that the judgment of the Supreme Court of Louisiana hereinbefore last referred to not only precludes and estops the plaintiff herein from having and maintaining the present action, but that under and by virtue of the same the city of New Orleans is legally and equitably entitled to be put in possession and to have absolute and unrestricted control of all the property, real and personal, and all the rights, franchises, privileges, servitudes, and claim of every nature and description referred to in and embraced by the judgment in the aforesaid suit No. 3701.

Further, this appearer says that if any portion of the real estate estate referred to and in and embraced by the aforesaid decree of the Supreme Court in favor of this appearer, or referred to in or embraced by the petition herein filed, has been lawfully dedicated to public use, it is the right and duty of this appearer to remove therefrom all impediments and obstacles found in said streets, so as to render the same open and free for use on the part of the public.

801 Wherefore this appearer prays that upon the original action judgment may be entered in favor of this appearer and against the said plaintiffs; that the injunction herein obtained may be dissolved and held for naught; that this appearer may have and recover in accordance with law fifty thousand dollars for damages by her sustained by reason and on account of the aforesaid writ of injunction, and twenty-five hundred dollars special damages for attorney's fees; and that the said plaintiffs may be furthermore condemned to pay all the costs of this suit.

And reconvening and becoming plaintiff in reconvention, this appearer prays that the New Orleans, Mobile and Texas Railroad Company may be cited to appear and answer this demand in reconvention; that in due course of law the rights, claims, and demand in favor of this appearer, as fixed and decreed by the supreme court of Louisiana in the aforesaid suit No. 3701, may not be recognized by this honorable court, but that such order or orders, writ or writs, process or processes, as shall become necessary, be directed to issue, not only for the purpose of placing this appearer in the quiet and peaceable, the sole and absolute possession of all the property, rights, credits, claims, demands, privileges, franchises, and servitudes accorded to her by the supreme court of Louisiana in manner and form and by the judgment aforesaid, but to maintain and keep this appearer in the quiet, uninterrupted, sole, and absolute possession and enjoyment thereof, free and clear of all hindrance or disturbance on the part of plaintiffs or any party or parties whomsoever.

She further prays that it should appear upon the trial of this case that any part or portion of the landed property claimed by this appearer under the judgment aforesaid has been lawfully dedicated as a public street for the uses and convenience of the public, and that obstructions or obstacles have been placed in such public streets by the plaintiffs herein, or any other person or persons whomsoever, that this appearer may be declared to have the right and authority to remove any and all of such obstructions and impediments, and to open the public streets aforesaid

802 for the public use and convenience, and that the said plaintiffs may be perpetually enjoined and restrained from interfering, directly or indirectly, and in any manner whatever, with the free and full use, and enjoyment, on the part of the public, of such public streets or places.

This appearer further prays that plaintiffs may be condemned to pay such damages as are hereinabove prayed for, together with all the costs of suit; and that this appearer may have such other and further order, judgment, and relief, as may be suited to law and the nature of the case.

(Signed) H. H. WALSH,
Ass't City Att'y.

(Signed) GEORGE S. LACY,
City Attorney.

(Signed) WM. W. KING,
Of Counsel.

State of Louisiana, Superior District Court for the Parish of Orleans.

FRIDAY, *the 2d day of June*, 1876.

Present, the Honorable B. L. Lynch, Judge.

N. O., MOBILE AND TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

The plaintiff presents to the court a petition, and a bond for the removal of this cause to the circuit court of the United States, according to the acts of Congress, and asks for the filing of the papers and making of the order prayed for.

Whereupon the court directs the filing of the papers, and that a notice issue to the defendant's attorney, returnable on Tuesday next, to show cause, if any, against the order.

A true copy. Extract from the minutes.

(Signed) P. E. BURKE,
D'y Clerk.

TUESDAY, *June 6th*, 1876.

Present: Hon. B. L. Lynch, Judge.

NEW ORLEANS, MOBILE AND TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

The rule herein taken for the removal of cause to the circuit court of the United States, came on this day for trial.

803 Jno. A. Campbell, for plaintiff in rule, defendant being absent and not represented.

When, after hearing the pleadings and counsel, the court considered the law to be in favor of plaintiff in rule—

It is ordered that said rule be made absolute, and accordingly that this cause be removed to the circuit court of the United States.

Decree. Entered and Filed June 11th, 1878.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

NEW ORLEANS, MOBILE AND TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 7912.

This cause came on to be heard on the pleadings, proceedings, and orders, in the cause, and was argued by counsel for all of the parties.

The court, after consideration of the premises, declares, and decrees, that the judgment rendered by the eighth district court of the parish of Orleans, in the suit No. nineteen, in that court, between the same parties, the 19th day of December, 1871, and which judgment was affirmed by the supreme court of this State the 4th day of May, 1874, upon appeal made by the defendant in this suit, has the authority of *res adjudicata* between them, the subject matter of the two suits being the same, and the object identical; and the wrongs committed by the defendant, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals.

The court orders and decrees that the injunction granted in this suit by the superior district court, before its removal to this court, be perpetuated, and the defendants be enjoined and restrained from disturbing the plaintiff, their agents, servants, and assigns, in the occupation, use, and employment of their railroad tracks, depots, and other appurtenances, under their charter, which are in and along the streets, squares, spaces, specified in the grants of the General Assembly to the said corporation, and also in the order and decree of the said supreme court, in the cause No. 3692 aforesaid, a transcript of which is on file; and that the defendants pay the costs of this suit.

June 11th, 1878.

(Signed) EDWARD C. BILLINGS,
Judge.

804 *Testimony of Wm. S. Williams.*

WM. S. WILLIAMS, sworn for plaintiff, says:

Question. Are you not connected with the Chattanooga Railroad?

Answer. I am.

Question. In what capacity?

Answer. As treasurer.

(Witness shown map marked X.)

Question. Were you aware of the time the city ordinance was passed, selling to Morgan a portion of the batture in front of New Orleans?

Answer. Yes, sir; last July you have reference to, I believe.

Question. Yes; do you recognize it on the map?

Answer. That is as I should point it out. This diagram, I should think, was correct.

Question. At the time that ordinance was in agitation, did your company make an offer to the city of any price for that property? If so, state it.

Answer. As soon as we knew the price at which they proposed to sell that property, we offered twice the amount for it.

Question. Do you now recollect the figures?

Answer. One hundred and eight thousand dollars we offered for it.

Question. Notwithstanding your offer the sale was made to Mr. Morgan, was it, or was the ordinance passed?

Answer. The ordinance passed.

Cross-examined:

Question. Has your company bought any squares upon that neighborhood?

Answer. Yes, sir.

Question. Which ones?

Answer. I could point it out on the map.

Question. State between what streets?

Answer. We have bought property between Water and Calliope, St. Joseph and the river, as one purchase.

805 Question. What price did you pay for it?

Answer. I think we paid seventy thousand dollars for it.

Question. What other one?

Answer. We bought between St. Joseph and Julia, Pilie and Water.

Question. At what price?

Answer. I don't remember the price of that. It was at a city sale some two years ago, I think, or three years.

Question. What other one?

Answer. We bought, I think, one-half of the one lying in front of the one just mentioned.

Question. How much for that?

Answer. I don't remember; I should have to refer to the records for that.

Question. What others?

Answer. We have since bought between Julia and Notre Dame, Water and Pilie.

Question. What price did you pay for it?

Answer. We either gave $35,000 with $5,000 added, or it was $30,000 with $5,000 added; it was about $35,000.

Question. That is the square next to the one you refer to as having been offered to be sold to Mr. Morgan?

Answer. Yes, sir.

Question. At the time your company offered one hundred and eight thousand dollars *for the square to which we have referred*, had not the ordinance already passed both boards, and was not the offer made to the mayor in order to defeat Mr. Morgan?

Answer. It was not made to defeat Mr. Morgan. It was made as soon as we knew the price.

Question. Was it made after it had passed both boards?

Answer. I can't say whether one or both; as soon as the price came to our notice of fifty-four thousand dollars we immediately sent a proposition offering one hundred and eight thousand dollars.

Question. It had passed one board?

Answer. I can't say the price had been brought to our
806 notice either by the passage through one board, or by some outsiders.

Question. Was not the ofler made to the mayor of the city?

Answer. It was a written, authentic offer. I don't know to whom it was sent; the president was here at the time; I think I joined him as two officers of the company.

Question. Was it after it passed the council?

Answer. Possible it was, but it was as soon as it was brought to our notice, and we learned the price.

Re-direct examination:

Question. When you made that offer did you or not understand at that time that Morgan's purchase was complete?

Answer. No, sir.

Question. Would you have made any offer if you had known he had closed his bargain?

Answer. No, sir; it would have been useless; we did't snppose it was complete; we knew the fence had not been made; had no reason to suppose that the fence had been made.

807 *Oath of Translator.*

State of Louisiana, Eighth District Court, Parish of Orleans.

N. O., M. AND C. R. R. Co. *vs.* CITY OF NEW ORLEANS *et als.* } No. 4.

Before me, deputy clerk of the eight district court for the parish of Orleans, personally came and appeared A. L. Villeré, who solemnly swears that he will well and faithfully perform all and singular the duties of translator under the order appointing him as such, dated February 20, 1871, a copy of which is hereto annexed. So help me God.

(Signed) A. L. VILLERÉ.

Sworn to and subscribed before me, New Orleans, February —, 1871.

(Signed) ROBERT LYNNE,
Deputy Clerk.

Order of Appointment.

State of Louisiana, Eighth District Court, Parish of Orleans.

MONDAY, the 20th day of February, 1871.

Present, the Honorable Henry C. Dibble, judge.

N. O., M. AND CHAT. R. R. Co. *vs.* CITY OF NEW ORLEANS *et als.* } No. 4.

808 It is ordered by the court that A. J. Villeré, Esq., be appointed as a translator herein to translate "Document A. E," filed Jan. 10th, 1871, written in the French language, said document purporting to be "an act of donation by the owners of the batture in front of Faubourg St. Marie, to the mayor and alderman and inhabitants of the city of New Orleans, and that said Villeré be notified to appear and qualify as such.

A true extract from the minutes.

ROBERT LYNNE,
Deputy Clerk.

Translation of Document A. E.

In the city of New Orleans, in the State of Louisiana, on the twentieth day of September, one thousand eight hundred and twenty, and the forty-fifth of the Independence of the United States of America, before me, Hughes Lavergne, notary public, duly commissioned in and for the city and parish of New Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Messrs. Edward Livingston, Jean Cravier, Louis
809 Bathelemi Macarty, Christopher Toledano, Vincent Rollieux, Toussaint Mossy, Elie Victor Jourdain, Manette St. Armand, free woman of color and of lawful age, Henry McCall herein acting in his own behalf and on behalf of Joseph J. Winter, his partner, Etienne Mazureau, as agent and attorney in fact of Alexandre Labranche, under power of attorney duly exhibited to the undersigned notary; the Honorable James Pitot herein acting in the name and on behalf of Bertrand Gravier, Jr., and of Miss Jeanne Gravier, daughter, of full age, and also in the name and on behalf of Mrs. Jeanne Bordier, wife of Jean Matthieu Helant Petit, all residing in France, by virtue of powers of attorney and supplementary power of attorney, which the said Mistress Petit had executed in favor of Nicholas Alphonse Desmare by act before Deschamps and his colleague

notaries at Bordeaux, under date of the sixteenth day of July, eighteen hundred and seventeen, and twenty-fifth day of
810 September, eighteen hundred and eighteen, and of that which the said Bertrand Gravier, Jr., and Miss Jeanne Gravier had executed in favor of the Honorable Pierre Derbigny, by act passed before Bagnaire and his colleague notaries at Bergerac, on the eighteenth of June, one thousand eight hundred and seventeen; all of which powers of attorney are deposited in the office of Michael De Armas, notary public in this city, and have been transferred to the said Mr. James Pitot by the said Messrs. Desmare and Derbigny by acts passed under date of the fifth and tenth of June last, and deposited in the same office; Bathelemi Lafon, in the name and as testamentary executor of the late Pierre Delabigarre and Mr. John W. Oddie, by virtue of a general and special power of attorney of Mrs. Margaret, widow of the late Pierre Delabigarre, and of Maria Louisa Delabigarre, widow of P. Hewart, and of Miss Amarylis Laura Delabigarre; all of which appearers reside in New Orleans.

On one part—

811 And the Honorable Joseph Rouffignac, mayor of the city of New Orleans, therein residing, acting, and stipulating in behalf and in the name of the mayor, alderman, and inhabitants of New Orleans, by virtue of the proceedings of the city council, under date of the thirty-first of August last, of which an authenticated copy is hereto annexed.

Which said first appearers, whether in their own name or in the capacities which they hold, and as actual owners of the batture in front of the suburb St. Mary, or representing said owners, wishing to favor the public in the use of the river side, which lies in front of said batture, and to facilitate the communication between the streets which will terminate at that place, have, by these presents, made a donation intervivors and irrevocable, and in the best form in which a donation may be valid, to the mayor, alderman, and inhabitants of New Orleans, herein represented by the Honorable Joseph Roffignac, mayor of city, now present, and accepting and stipulating for the said mayor, alderman, and inhabitants, by virtue of the
812 anthority in him vested for that purpose by the city council, in the proceedings of thirty-first of August, ultimo, of which a true copy is hereto annexed, of all the rights which the said donors have or may have respectively:

1st. In all that portion of the said batture or alluvion which exists from the lower limit of the property of Mr. William W. Montgomery, and extending downwards to the limit between the city and the suburb St. Mary, and taking from the foot of the new levee exteriorly to the marginal line of the river when at its lowest stage.

2d. In the new levee which has been constructed on the whole

length of the said portion of batture, as well as the ground on which it is built, such as said levee will be when it shall have been repaired, increased, and braced with wood by the said donors, as hereinafter agreed.

3d. In the ground necessary for the extension of the streets of said suburb up to the new levee, which shall be opened and graded and laid with a wharf and slope on the river at
813 the expense of said donors, as it is hereinafter prescribed by this act; and

4th. On the ground of Tchoupitoulas street, on the whole length of said suburb, allowing said street sixty feet in width, including the sidewalks or banquettes; all of which lots so donated are not encumbered by any mortgages on the part of said donors, as appears from the certificate of the recorder of this city, dated this day, excepting the following, to wit:

Thirty thousand eight hundred and eighty-nine dollars of mortgage, given by Edward Livingston, in the following manner, to wit:

Twelve thousand eight hundred and twenty doliars, in favor of James Johnston, on the lot number two on the plan hereto annexed, certified by Livingston and *paraphed ne varietur* by the undersigned notary; fourteen thousand three hundred dollars in favor of Messrs. Vincent Nolte and Laurant Millaudon, on the three lots forming the corner of Notre Dame street and of the new levee, and bearing the numbers eighteen, nineteen, and twenty on said plan.

814 Three thousand and five hundred dollars, in favor of Joseph Segura, on the lot number eleven; one thousand two hundred and sixty-nine dollars, in favor of James Ramsey, on lot number thirteeen of said plan, which said lots do not encroach in any manner on the ground and extensions of streets which are subject to this donation, as appears by the said plan. Furthermore, nine hundred and eighty-five dollars and sixty-eight cents and three-fourths of judicial mortgages against Mr. Gravier, resulting from several judgments in favor of the following named persons, to wit:

John Bossier, for four hundred and seventy-four dollars six cents and one fourth, with interest; and Joseph Taboire, for the sum of two hundred and forty-five dollars and eighty-one cents and one-fourth, and interest; and two hundred and sixty-five dollars and eighty-one cents and one-fourth, and interest.

Furthermore, two thousand and sixty-seven dollars of tacit mortgages against John Linton, as surety on the bond executed in the probate court by Stephen Duncan, as curator of the succession of Hamilton Blakony.

815 And, finally, fifty thousand dollars of mortgages granted by Pierce Delabigarre in favor of Jean Gravier, to secure the sale of the batture.

The present donation is made with the express condition, without which it would not have taken place, to wit:

That all lots of ground which are the object of the present donation will remain inalienable and guaranteed against all seizures, either for debts or otherwise, in the hands of the corporation of New Orleans, which will never, under any pretext, as herein agreed to by the mayor, aldermen, and inhabitants of New Orleans, duly represented herein, be sold, exchanged, donated, or disposed of, in whole or any part thereof, in any matter whatever, or be used for other public purposes than those for which they are naturally destinated, nor to erect thereon any building or construction; with the exception, however, of the only case in which the city council would deem it proper to the public interest, or to authorize the erection of a fire engine house on such portion of the batture which the city council shall select for that purpose.

It is hereby agreed, nevertheless, that this restriction
816 from erecting buildings or constructions will not be construed in such a manner as to prohibit the mayor and city council of New Orleans from establishing, or causing to be established, piers or wharves to facilitate commerce, when the said mayor and city council will deem it proper.

And in consideration of this present donation and the advantages which may derive therefrom for all parties, the said donors hereby jointly obligate themselves by these presents in favor of the said donees, and this by them accepted to repair and increase the New levee thus donated on its whole length, so that it shall have sixty feet at the top; which said levee shall be constructed in the direction of the fellow lines on the plan hereto annexed and designated by the letters A, B, C, D, which said plan shall be paragraphed *ne varietur;* and the said levee shall be covered with cypress wood, in the same manner as that part of the levee lying in front of the city, between Conti and Bienville
817 streets. And the donors further obligate themselves, respectively, in favor of the donees as accepted by them, to open and raise, at their expense, all the streets of the said suburb, St. Mary, which are to be extended from Tchoupitoulas street to the new levee, as donated, and to erect at the extremity of each of said streets thus extended and outside of the levee thus given, a platform, being twelve feet in length and a width equal to that of the street so extended, with an easy slope on each side; and the said donors bind themselves by these presents to begin immediately all the said works from the date of the present act, this in the following manner, to wit:

The works for the repairs, increase and covering of the levee above-mentioned, such as they are described above, to extend from the lower limit of the suburb St. Mary, going up in such a manner that they be continued without interruption, as long as

not obstructed by the rising of the river, and that they be completed in the term of two years from the date of the present
818 act; and the necessary works for the filling up of the streets of the said suburb from Tchoupitoulas street as far as the new levee, so that they be completed, and that the said extensions be practicable for carriages and carts, at the latest, by the first of January, eighteen hundred and twenty-one.

It is agreed between all the parties that all the works above described will be executed under the direction and approbation of the surveyor of the city, and in default of said donors beginning the said works within fifteen days from the date of the present act, the mayor and the city council shall have the right to have, and the works executed at the charges and expenses of the said donors, said in the manner which the said mayor and city council will deem proper; and that further they will be empowered to seize and sell the lots of the said donors, hereinafter affected and hypothecated, for the payment of said works.

It is further agreed, that until the streets aforesaid be
819 satisfactorily filled and raised, and until the works of the levee be completed, the city council shall issue orders to enjoin the public from taking any dirt on any portion of the batture thus donated, with the exception of the space lying between a line corresponding with the extension of Girod street and the limit of the property of William W. Montgomery, and that the city surveyor shall see that the said dirt be taken in equal portions.

And it is finally agreed that immediately after the completion of said works and the acceptances of the same by the city surveyor, the maintenance and the repair of the levee, platforms, streets, and slopes herein above mentioned, shall be, at the expense of the mayor, aldermen, and inhabitants of New Orleans; and furthermore, in consideration of the present donation, and the advantages which may derive therefrom for all parties, the said donors obligate themselves, by these presents, to demolish and cause to be demolished, at their charges and expenses, within one month from the date of the present act, all buildings
820 or other wooden constructions which actually exist on the batture of suburb St. Mary, and to cause all the materials thereof to be carried away; and they are enjoined themselves, their heirs and assigns, by these presents, from having the power of erecting any house or building on the said batture unless the walls of said buildings shall be of bricks or stones; and that they shall be with tiles or other incombustible materials, under penalty, if there be any contravention of this present clause, to have the said houses or buildings, which would be differently constructed, torn down at their charges and expenses.

And the said mayor, aldermen, and inhabitants of New Orleans, represented as hereinabove set forth, obligate themselves, by these

presents, to erect a market for the use of public marketing, which shall be situated in the suburb St. Mary; and this for and in consideration of the sum of three hundred dollars, which the said donors bind themselves, by these presents, to pay to the corporation of the city of New Orleans for each lot of thirty feet front which they own on the batture of the suburb St.
821 Mary, without any regard for the depth of said lots, and this in their respective notes, to the order of the mayor of the city of New Orleans, at one and two years from the date of the present act, executing each one of them respectively a special mortgage on the lots to them belonging respectively, on the said batture, and this for the surety of the payment of the aforesaid notes at their maturity; and in case the sum accruing from said payments be more than sufficient to cover the expenses of the building of the said market, the mayor, aldermen, and inhabitants of New Orleans, represented as aforesaid, bind themselves, by these presents, to use the exceeding amount towards defraying the expenses of the building of another market, to be used for public marketing, which shall be situated in the suburb Marigny.

And in execution of the present conventions, the said donors have immediately given and delivered in the presence of me, notary, and the undersigned witnesses, to the Honorable
822 Joseph Roffignac, who hereby acknowledges receipt thereof, their respective notes dated this day, and to the order of the said Joseph Roffignac, mayor of New Orleans, for the lots which they own respectively on the batture of the Fauborg St. Mary, in conformity with the plan hereto annexed, which notes were *paraphed ne varietur*, to indentify them with the present act, and have been given in the following manner:

Two notes drawn by Edward Livingston, under date and to the order above mentioned, one for the sum of five thousand four hundred and eighty-three dollars thirty-three cents and one-third, payable one year after date, and the other for an equal amount of five thousand four hundred and eighty-three dollars thirty-three cents and one-third, payable two years after date, amounting together to the sum of ten thousand nine hundred and sixty-six dollars sixty-six cents and two-thirds.

Two notes drawn by Jean Gravier of the same date, and to the same order, one for the sum of twelve hundred and forty
823 dollars, payable one year after date, and the other for an equal sum of twelve hundred and forty dollars, payable two years after date, amounting together to the sum of two thousand four hundred and eighty dollars.

Two notes drawn by Louis Barthelemy Macarty of the same date and to the same order, one for the sum of one hundred and fifty-five dollars, payable one year after date, and for the other an equal sum of one hundred and fifty dollars, payable two years

after date; amounting together to the sum of three hundred and ten dollars.

Two notes drawn by the said Christophe Toledano, of the same date and to the same order, one for the sum of one hundred and thirteen dollars seventy-five cents, payable one year after date, and the other for an equal sum of one hundred and thirteen dollars seventy-five cents, payable two years after date; amounting together to the sum of one hundred and eighty-seven dollars and fifty cents.

Two notes drawn by the said Vincent Riellieux, of the same date and to the same order, one for the sum of two hun-
824 dred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by Toussaint Mossy, of the same date and to the same order, one for the sum of one hundred and thirty-six dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and thirty-six dollars and twenty-five cents, payable two years after date; amounting together to the sum of two hundred and seventy-two dollars and fifty cents.

Two notes drawn by the said Elie Victor Jourdain, of the same date and to the same order, one for the sum of one hundred and eighty-one dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and eighty-one dollars and twenty-five cents, payable two years after
825 date; amounting together to the sum of three hundred and sixty-two dollars and fifty cents.

Two notes drawn by Messrs. Winter and McCall, and Linton and Wilkins, and of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date—amounting, together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by said Alexander Labranche of the same date and to the same order, one for the sum of two hundred and seventy-two dollars ninety-one cents and two thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date—amounting, together, to the sum of

826 five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by the said James Pitot, in the name and as agent and attorney in fact of Jeanne Bordier, wife Petit of Bertrand Gravier, Junior, and of Jeanne Gravier, of the same date and to the same order, one for the sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable one year after date, and the other for an equal sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable two years after date—amounting, together, to the sum of nine thousand six hundred and ninety-seven dollars and fifty cents.

Two notes drawn by Barthelemey Lafon, in the name and as testamentary executor of late Pierre Delabigarre, of the same date and to the same order, one for the sum of four hundred and seventy dollars, payable one year after date, and the other for an equal sum of four hundred and seventy dollars, payable two years after date—amounting, together, to the sum of nine hundred and forty dollars.

827 For all which notes the Honorable Joseph Roffignac, in his official capacities, gives discharge to the said donors, provided the same be paid at their maturity.

And as to the said Manette St. Amand, free woman of color, herein appearing and donor in the present act, she preferred to exempt herself from furnishing her two notes of one hundred and fifty dollars each, at the term of one and two years as aforesaid, and to avoid giving a special mortgage on the lot number twelve on the plan hereto annexed, and measuring thirty-one feet front and the depth specified on the said plan, which she possesses on the said batture, to pay immediately her respective share, amounting to three hundred and ten dollars, into the hands of the Honorable Joseph Roffignac, in his official capacities, who acknowledges having received the said sum of three hundred and ten dollars for the two notes of one hundred and fifty-five dollars each, payable one and two years after date,

828 that the said Manette St. Amand would have had otherwise to furnish; hereby declaring the said Joseph Roffiignac to give by these presents to the the said Manette St. Amand, good and valid discharge for said respective share of three hundred and ten dollars, and to secure the payment of the said notes at their respective maturity, the said donors declare giving in their own right, respectively, a special mortgage in favor of the mayor, aldermen, and inhabitants of New Orleans on the following lots, to wit:

The said Edward Livingston has mortgaged as above mentioned—

1st. The lot No. one of the plan hereto annexed, having one

hundred and forty-two feet eight inches front on the depth specified on the said plan.

2d. The lot number 20 of said plan, having two hundred and ten feet front on the depth aforesaid.

3d. The lot No. twenty-one of the said plan, having two hundred and forty-two feet front on the depth aforesaid.

829 4th. The lot No. twenty-two of the aforesaid plan, having two hundred and twenty feet front on the depth aforesaid.

5th. The three-fourths of lot number twenty-four of the said plan, which he possesses in common with the heirs of Labigarre, the said lot having three hundred and thirty-two feet front on the depth above mentioned; and,

6th. Finally, the three-fourths of lot number twenty-five of the said plan which he possesses in common with the same heirs, which lot has forty-four feet front on the depth aforesaid.

The whole to secure the payment of ten thousand nine hunhundred and sixty-six dollars sixty-six cents and two-thirds, amount of the notes above mentioned drawn by him as aforesaid.

The said Jean Gravier has mortgaged in the same manner the one-fourth of the lot number twenty-three, designated on the aforesaid plan, which he possesses in common with the heirs of Gravier, the said lot having four hundred and ninety-six

830 feet front, on a depth as specified on the aforesaid plan; and this to secure the payment of the sum of one thousand two hundred and forty dollars, amount of the notes drawn by him as aforesaid.

The said Louis Barthelemy Macarty has mortgaged in the same manner the lot number sixteen of the said plan, having thirty-one feet front on the depth specified on said plan; and this to secure the sum of three hundred and ten dollars, amount of the notes drawn by him as aforesaid.

The said Christophe Toledano has mortgaged as aforesaid, the lot number eighteen of the said plan, the said lot having twenty-two feet nine inches front on the depth specified on said plan; and this to secure the payment of two hundred and twenty-seven dollars and fifty cents, amount of the notes drawn by him as aforesaid.

The said Vincent Rillieux has mortgaged likewise the lot number ten of the said plan, having fifty-four feet seven inches front on the depth specified on said plan, to secure the

831 payment of five hundred and forty-five dollars eighty-three cents and one-third, of notes drawn by him as aforesaid.

The said Troussant Mossy has mortgaged in the same manner the lot number nine of the said plan, measuring twenty-seven feet four inches front on the depth specified on said plan, to se-

cure the payment of the two hundred and seventy-two dollars and fifty cents of notes drawn by him as aforesaid.

The said Elie Victor Jourdain has mortgaged in the manner the lot number fourteen of the said plan, measuring thirty-six feet three inches on the specified depth on the plan, to secure the payment of three hundred and sixty-two dollars and fifty cents of notes drawn by him as aforesaid.

The said McCall and Linton, in the name of their partnership of Winter and McCall and of Wilkins and Linton, have mortgaged the lot number six of the said plan, measuring fifty-four feet seven inches front, on a depth specified on the said plan,
832 to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by them as aforesaid.

The said Etienne Mazereau, as agent and attorney-in-fact of the said Alexandre Labranche, has mortgaged in the same manner the lot number five of the said plan, measuring fifty-four feet seven inches front on the depth specified on the said plan, to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by the said Alexandre Labranche as aforesaid.

The said James Pitot, in his official capacities, has mortgaged in the same manner the lots number two, four, six, eight, eleven, thirteen, fifteen, seventeen, nineteen, and three-fourths of the lot number twenty-three of said plan, measuring, together, eight hundred and forty-five feet nine inches on the depth specified on said plan, to secure the payment of nine thousand six hun-
833 dred and ninety-seven dollars fifty cents of notes drawn by him in his said capacities as above stated.

And the said Barthelemi Lafon in his official capacities has mortgaged in the same manner, the one-fourth of the lots number twenty-four and twenty-five of the said plan, owned in common by the heirs of Delabigarre and Livingston, the said portions of lots having together ninety-four feet front on the depth specified on the aforesaid plan, and this to secure the payment of nine hundred and forty dollars subscribed by the said Lafon, in the aforesaid capacity.

And for the inscription of the present mortgages, and for the registry of the donation contained in the present act, all necessary powers are given to the bearer of a duly authenticated copy thereof.

Done and passed in my office on the day, month, and year above mentioned, in presence of Messrs. Jean Baptist Desdunes, Jr., and Jean Bte. Donatieu Augustin, witnesses by me
834 requested so to be, and residing in this city, who, together with the said appearers, and me, notary, have signed these presents, the whole after the reading thereof.

Original signed:

Edw. Livingston.
E. Mazereau.
for Jean Gravier.
A'dre Labranche.
T. Mossy.
Toledano.
L. B. Macarty.
Lafon,
Testamentary executor of Pierre Delabigarre.
Manette St. Amand.
J. Roffignac, mayor.
Vincent Rillieux.
J. Pitot,
Agent and attorney-in-fact of the heirs of Gravier.
Winter & McCall.
Wilkins & Linton.
E. V. Jourdain.
J. B. Desdunes. (Son.)
J. B. D. Augustin.
H. Lavergne, Not. Pub.

STATE OF LOUISIANA,
Parish of Orleans.

I, Andrew Hero, Jr., a notary public, and the custodian
835 of notarial records in and for the parish and city of New Orleans, duly commissioned and qualified, do certify the foregoing as being a true copy of the original act extant in the records of Hugues Lavergne, formerly a notary public in this city, and whose records I hold as custodian thereof.

As attest my hand and seal at New Orleans, as custodian aforesaid, this thirteenth day of October, A. D. eighteen hundred and seventy.

(Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

I certify that the foregoing is a true and correct translation of the document marked A E, filed January 10, 1871, in the eighth district court for the parish of Orleans, in the matter of New Orleans, Mobile and Chattanooga Railroad Company *vs.* The City of New Orleans, No. 19 of the docket of said court.

(Signed) A. L. VILLERE.

New Orleans, February 27, 1871.

836 *Document A F. Compromise between municipality No. two and the owners of the batture in front thereof. Filed January* 10, 1871.

STATE OF LOUISIANA,
City of New Orleans.

Be it known that this day, before me, Henry Breton Cenas, a

notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared—

Alexander Brother, Henry Renshaw, and Charles Dabney Yancey, of the said city of New Orleans, composing the finance committee of the council of municipality number two of said city, and herein acting in their capacity as such, under the authority of a resolution of said council adopted on the seventeenth day of June instant, a duly certified copy whereof is hereunto annexed for reference, parties hereto of the first part.

And with them also came and appeared the persons hereinafter named, parties hereto of the second part, being the original parties, or the agents, heirs, and legal representatives of the parties to a certain act, commonly called a donation, passed
837 on the twentieth day of September, eighteen hundred and twenty, before Hugues Lavergne, then a notary public in this city, between the said original parties, as the actual possessors of the batture in front of the Fauborg St. Marie, and the mayor, aldermen, and inhabitants of the city of New Orleans, which said act is now to be found in the office of Theodore O. Stark, a notary public in this city, the successor of William Christy, who was the successor of the said Lavergne, to wit:

First. Christophe Toledano of this city, one of the original parties to said donation.

Second. Victor Roumage and Ambroise A. Pardo of this city, testamentary executors of the late Louis B. Macarty, late of this city, deceased, and herein acting in their capacity as such.

Third. The following, comprising all the heirs and legal representatives of the late Elie Victor Jourdain, late of this city, deceased, to wit:

1st. John B. V. Jourdain, of lawful age, son of the deceased.

2d. Mistress Leonide Jourdain, daughter of the said
838 deceased, and wife of Adelard Blondeau of this city; she being of lawful age, and herein assisted by her said husband.

3d. Elie Farram Lavillebeuvre, son of Jean U. Lavillebeuvre, by his late wife, the Mistress Elizabeth Chandee Jourdain, daughter of the said deceased; the said appearer being of lawful age.

4th. Mistress Aspasie Lavillebeuvre, daughter of the said Jean U. Lavillebeuvre and his said wife, and now wife of Samuel James Peters, Junior; she being of lawful age, and herein assisted and authorized by her said husband.

5th. Mistress Stephanie Josephine Lavillbeuvre, daughter of the said Jean U. Lavillebeuvre and his said late wife; she being above the age of puberty, and the wife of Victor J. Forstall, and by him herein duly assisted and authorized; and,

6th. The said Jean U. Lavillebeuvre, herein acting in the

capacity of natural tutor to his minor children, Suzanne, Eugenie, and Jourdain Lavillebeuvre, the lawful issue of him and his said late wife; all residing in this city, and composing the
839 whole of the heirs of the said late Elie Victor Jourdain, as aforesaid.

Fourth. The following, comprehending the whole of the heirs and legal representatives of the late Vincent Rilleiux, late of this city, deceased, to wit:

1st. James P. Freret, William Freret, John Freret and Mistress Eugenie Freret, of lawful age, wife of James Stuart, and herein duly assisted and authorized by her said husband, the said appearers, being the sole heirs of their late mother, whose name was Eugenie Rillieux, and sister of the said late Vincent Rillieux.

2d. Mistress Heloise Marie Rillieux, widow of the late L. M. Reynaud, late of this city, deceased, and sister of the said late Vincent Rillieux.

3d. The following, being the children and the grand-children of the late Mistress Marie Desirée Rillieux, sister of the said Vincent Rillieux, and late wife of Jean Baptiste Germain Mousson, of this city; Michel Mousson, of lawful age; Mistress Anne Eugenie Mousson, wife of Charles Francis Louis Defaure, Comte de Rochefort, residing in France, and herein represented
840 by her brother, the said Michel Musson, by virtue of an act of procuration passed before J. C. Brent, consul of the United States at Paris, on the twenty-third day of September, eighteen hundred and thirty-nine, and annexed to an act passed before Adolphe Mazerrau, a notary public in this city, on the sixteenth day of December, eighteen hundred and thirty-nine, Eugene Musson, now in California, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed before L. Hermann, then a notary public in this city, on the second day of March, eighteen hundred and forty-nine; the five minor children of Mistress Marie Celestine Musson, wife of Laurent Pierre Augustin Hyacinthe DuGas, of Paris, now deceased, and herein represented by their grandfather, the said Germain Musson, Henry Germain Musson, now residing in Europe, herein represented by his brother, the said Michel Musson, by virtue of an act of procuration passed before A. Gillors, Chancellor General of the French Legation, at Athens, Greece, on the nineteenth day of September, eighteen hundred
841 and forty-three, a certified copy whereof is annexed to an act passed before William Christy, then a notary public in this city, on the thirteenth day of May, eighteen hundred and thirty-four.

4th. Mistress Marie Antonette Rillieux, a sister of the late Vincent Rillieux, and widow of the late Michael Smith, deceased, now residing in England, and herein represented by the said

Germain Musson, by virtue of an act of procuration passed before Lairtullier and his colleague, notaries in Paris, on the thirty-first day of August, eighteen hundred and thirty-seven, and annexed to an act passed before Adolphe Mazereau, a notary public in this city, on the tenth day of January, eighteen hundred and thirty-eight; and,

5th. Mistress Caroline Uchette Landreaux, daughter of the late Melicerte Rillieux, sister of the said Vincent Rillieux, and of the late Honore Landreaux, deceased, and now wife of U. Kernion, she being herein duly assisted and authorized by her said husband.

842 Fifth. The following composing the whole of the heirs and legal representatives of the late Toussaint Mossy and of his late wife, Mrs. Marie Aimée St. Amand, deceased;

1st. Jules Mossy.

2d. Hypolite Mossy.

3d. The minor children of the late Toussaint Mossy, Junior, deceased, to wit:

Rose, Aimée, Eliza, Eugenie, and Victor Mossy, herein represented by their mother and natural tutrix, Mrs. Eliza Amand, widow, first of the said Toussaint Mossy, Junior, and second of the late Michel Rey, deceased; and,

4th. The above named three branches, as heirs of their late brother, the late Paul Mossy, deceased, and of his daughter, the late Celestine Mossy, a minor, who died, leaving as her only and forced heir her grandmother, Mrs. Caroline Trudeau, widow of the late Thomas Urquhart, deceased; the said grandmother having renounced her claim to the said succession by an act passed before A. Ducatel, a notary public in this city, on the thir-

843 teenth day of November, eighteen hundred and fifty.

Sixth. The following, comprehending the whole of the heirs and legal representatives of the late John Linton, deceased:

1st. Stephen Duncan Linton, of lawful age.

2d. Mistress Charlotte Bingamin Linton, of lawful age, and wife of Francis Surget, Junior, of Natchez, Mississippi, and herein duly assisted and authorized by her said husband, here present and approving; and,

3d. Washington Jackson, Junior, herein acting as the agent and attorney-in-fact of Stephen Duncan, of Natchez, aforesaid, and guardian of the minors, Mary Atwell Linton and John Linton, by virtue of the annexed power of attorney.

Seventh. Winter and McCall.

1st. Henry McCall, one of the members of the late firm of Winter and McCall, original parties to the aforesaid contract or compromise, and herein acting for and in behalf of himself; and,

2d. George W. Christy, herein acting as the agent and

844 attorney-in-fact of Mrs. Mary P. Winter, only daughter

and heir of the late Joseph Winter, late partner of the said McCall, of lawful age, and now the wife of Henry W. Whiting, of the city of New York, by virtue of the annexed power of attorney.

Eighth. Mistress Louise Livingston, widow of the late Edward Livingston, and Mistress Cora Livingston, the only child of the said Edward Livingston, and now wife of Thomas P. Barton, both herein represented by Randall Hunt, who acts by virtue of the annexed power of attorney, dated on the fourteenth day of January last, 1851.

Ninth. Miss Amarylis Laura Delabigarre and Mrs. Maria Louise Delabigarre, wife of Philip N. Searle, both of lawful age, and the only surviving heirs of their father, the late Peter Delabigarre, both represented by Robert N. Ogden and Abner N. Ogden, who act by virtue of the annexed power of attorney, dated on the tenth of April, 1850.

Tenth. The heirs of Bertrand Gravier.

1st. Jacques Gravier, son and only heir of Bertrand
845 Gravier, Jr., and only testamentary heir of Jennie Gravier, late of this city, herein represented by Henry R. Dennis, acting under and by virtue of the annexed power of attorney, a duly certified copy of a power of attorney deposited in the office of Adolphe Mazereau, a notary public in this city, on the twenty-ninth of October, 1850.

2d. Jennie Bordier, wife of Hellaut Petit, acting in her own name, and as heir for one-half of the said late Jean Gravier and herein represented by Carl Kohn, who acts by virtue of a power of attorney, duly recorded in the office of the said Mazereau, notary, on the twelfth day of July last past, a duly certified copy of which is hereto annexed.

Eleventh. The heirs of the late Alexander Labranche:

1st. Octave Labranche.

2d. Alcee Labrance.

3d. Adaline Labranche, widow of Drausin Labranche.

4th. Felicitie Lambranche, widow of Edmond Fortier.

All represented herein by the said Henry R. Denis, by virtue of a power of attorney passed before Francois Chewz, re-
846 corder and ex-officio notary public in and for the parish of St. Charles, in this State, on the thirtieth of December, 1850, a duly certified copy whereof is hereunto on the margin annexed for reference.

5th. The heirs of the late Louis Labranche, son of Alexander Labranche, Marie Louise Meteyé, Alexander Philip Auguste Meteyé, and Richard Francis Camte Meteyé, minor children of the late Madam Labranche, daughter of the said Louis Labranche, and of Francois Meteyé, her husband; said minors herein represented by the said Henry R. Denis, by virtue of a power of attorney, executed under private signature on the

twenty-fourth day of June, 1851, and duly acknowledged before Philip Lacoste, notary in this city, on the first day of July instant, and hereto annexed.

Twelfth. And in fine, the several persons whose signatures are hereunto respectively subscribed, being the other original parties to the compromise or contract of the twentieth day of September, eighteen hundred and twenty, hereinbefore mentioned or referred to, or the duly authorized agents, heirs, or legal
847 representatives of the same.

Which said appearers declared, that whereas, by the aforesaid act of the 20th of September, eighteen hundred and twenty, the new levee, now constituting New Levee street, together with all the batture then formed, or which might thereafter be formed, on the outside of the said levee, extending to the water edge of the river Mississippi, along in front of the fauborg St. Mary, from the city line below to the property of W. W. Montgomery above, were ceded and given to the city of New Orleans, as property inalienable and not liable to seizure, but to be forever left open for the use to which it was naturally destined; which said property, from that period to the present time, has remained in that condition, under the administration and at the expense of the city of New Orleans, and of the second municipality thereof.

And whereas, the said batture has in the meantime increased to such a degree as to be no longer required in its full extent for the purpose contemplated by the parties to the said act.

848 And whereas, the council of the municipality number two did, on the sixteenth day of June, eighteen hundred and forty-six, approve a plan drawn by George F. Dunbar, for laying out three new streets through the whole extent of said batture, between New Levee street and the Mississippi River, extending from Montgomery's property down to Common street, and did propose to sell and dispose of the lots of ground as designated on the said plan.

And whereas, the said batture is increasing every year in extent and becoming less adapted to the object for which it was intended by the act of twentieth of September, 1820, and instead of being an accommodation to the public and a convenience to commerce, retards business and increases the expenses of the merchants and of the community in general.

Now, therefore, the said appearers having agreed to alter its destination, moreover declared that they had agreed and stipulated, and do by these presents, in their several capacities
849 aforesaid, agree and stipulate as follow, to wit:

First. That the streets to be named Fulton street, Front street, and Delta street, shall be laid out and opened through the said batture according to the plan drawn by the said Dunbar, and approved by the council with this difference, viz.: That Fulton street and Front street shall be each sixty feet wide, and

lots formed to be numbered, and to have such form and dimensions as set forth on the plan prepared by J. A. Beard, auctioneer, copies of which plan are deposited in this office for reference.

Second. That the lots composing the squares or islets between the three said new streets shall be sold at auction by Beard & May, auctioneers of this city, or by such other auctioneer as may be named by the council of municipality number two and the parties to this act; and it shall be made the duty of such auctioneer or auctioneers to draw up a formal process verbal,
850 and to sign the same, and to deposit a duplicate thereof with the undersigned notary; and acts of sale shall be passed before the said notary, and signed by the finance committee of the said council, and the purchaser or purchasers, and the acts of sale thus signed shall be binding on all the parties of the second part as vendors; that the said auction sales shall be made after advertisements in at least two newspapers published in New Orleans, and shall be continued, from time to time, until all the lots are sold; that the lots on the square between New Levee and Fulton streets shall be sold in the winter of 1851 and 1852, unless the sale shall be postponed by account; that the lots in the squares between Fulton and Front streets shall be sold in the winter of 1852 and 1853, unless the parties to the act shall agree to some other time of sale, with the exception of the two squares bounded by Poydras, Fulton and Girod streets and the river, which are not to be sold until in the opinion of the council of municipality number two, they can be improved
851 without interfering with the square necessary for the convenience of commerce at that part of the landing; that the lots in the squares between Front and Delta streets shall be brought into the market and sold whenever the council of municipality number two shall determine the same to be susceptible of private ownership, and no longer necessary for the convenience of commerce; that the said lots shall be sold on the following terms and conditions, to wit: one-fifth of the price to be paid in cash and the balance in equal installments, (divided into coupons if necessary,) in one, two, three and four years, with six per cent. interest from the day of sale, and eight per cent. per annum after due, the payment whereof shall be secured by special mortgage on the property sold.

Third. That immediately after the sale of the property aforesaid, or any portion thereof, whether in cash or notes, or both, after deducting the necessary costs and expenses of the sale above, shall be divided and distributed in the manner follow-
852 ing, to wit: one-third shall be paid and delivered to the persons authorized by law to receive the same, to be applied to the payment of the old city debt or general sinking fund of the city of New Orleans, one-third shall be paid and delivered to the original parties to the contract of the twentieth of Septem-

ber, eighteen hundred and twenty, or to the heirs and legal representatives thereof, whose assent is given to the present agreement, each one to respectively receive in proportion to the front of the lots or portions of ground originally owned by him as shown by the said contract; and the remaining one-third of said proceeds shall be paid and delivered to the treasurer of the said municipality number two, for the exclusive use and benefit of said municipality.

Fourth. It is moreover well understood and agreed to, by, and between the said parties, that the said one-third part of the proceeds aforesaid, coming to the said parties of the second part, shall be paid over to each of them, in the proportion here-
853 inbefore set forth by the undersigned notary, as soon as practicable after the sale aforesaid, it being well understood also that in the said three grand divisions of the said proceeds, the notes to be divided shall be so arranged as to be as nearly as possible equalized between the three said parties so far as the responsibility and standing of the several drawers thereof is concerned.

Fifth. That the three squares or lots of ground between North Market and South Market streets, and designated on the plans as markets, shall belong to the municipality number two, upon the condition that the said municipality shall erect thereon market houses or other public buildings, or shall leave the same open as public squares, and shall in no event dispose of or sell the same as private property; and that all the portion of the batture between Delta street and the river Mississippi, above Lafayette street to the line of Montgomery's property, and all that
854 portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be, and is hereby, vested in perpetuity and full ownership in the said municipality number two, in favor of whom the appearers to this act hereby cede and relinquish forever all their claims in and to the said batture, as well as all and every enlargement thereof or accretion thereto by new formations.

And finally, it is well understood and agreed to, by, and between the said contracting parties, that this agreement or compromise is in no manner to change, alter, or prejudice the position or claims of any kind or nature whatsoever, which may now exist or which hereafter may arise, among or between any of the said parties of the second part to any particular amount or portion of the said one-third of the proceeds of the sale of the property aforesaid.

Thus done and passed in my office, at the city of New Orleans, in the presence of Auguste Commandeur and Charles Fred-
855 erick Barry, witnesses of lawful age and domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, notary, on this thirtieth day of

June in the year of our Lord one thousand eight hundred and fifty-one.

(Original signed) Geo. W. Christy.
" S. Duncan Linton.
" Randell Hunt.
" M'l Musson.
" Eugenie Stewart.
" James Stewart.
" A. Grailhe.
" Bermoudy.
" Millaudon.
" Henry J. Forstall,
As syndic of Rillieux.
" J. B. Jourdain.
" Leonide Blondeau.
" A. Blondeau.
" Victor J. Forstall,
Tuteur de sa fille.
" Samuel J. Peters, Jr.
" Ben. Toledano.
" A. Commandeur.
" A. Brother.
" Henry Renshaw.
" C. D. Yancey,
Committee.
856 " C. Kohn.
" Wm. Freret.
" John Freret.
" James P. Freret.
" Henry McCall.
" G. Musson.
" Toledano.
" Henry R. Denis.
" E. F. Lavillebeuvre,
Per pro. V. J. Forstall.
" Julien Colvis,
Assignee of succession of L. B. Macarty, by J. P. Benjamin, Attorney.
" M. E. Forstall.
" Aspasie E. Peters.
" J. U. Lavillebeuvre.
" Eugenie Toledano,
née Lavillebeuvre.
" Chs. Frederick Barry.
" H. B. Cenas,
Notary Public.

857 *Judgment.*

Eighth District Court, Tuesday, December 5, 1871.

N. O., M. & CHAT. R. R. Co.,
vs.
THE CITY OF NEW ORLEANS, CHARLES MORGAN, intervenor. } No. 4.

In this case submitted to the court for adjudication, after deliberation and for the reasons assigned in the written opinion this day delivered and filed, the court considering the law and the evidence to be in favor of the plaintiff—

It is ordered, adjudged and decreed, that there be judgment in favor of the plaintiff, the New Orleans, Mobile and Chatanooga Railroad Company, and against the defendant, the city of New Orleans, as prayed for, and that the injunction herein issued be made perpetual that the said city of New Orleans, its officers, and agents, and all persons claiming, or to claim under
858 them, be commanded, enjoined and restrained from hindering, or obstructing, or in any manner interfering with the said New Orleans, Mobile and Chatanooga Railroad Company in the occupation, enclosure or enjoyment of the land described in the fifteenth section of the act of the seventeenth of February, 1869, bounded by Girod, Water and Calliope streets, and a line parallel and two hundred and ninety feet easterly from Water street, and bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street.

It is further ordered, adjudged and decreed, that the intervention of Charles Morgan be dismissed, and that the defendant, the city of New Orleans pay costs of suit.

Judgment rendered, December 5, 1871. Judgment signed, December 15, 1871.

(Signed) HENRY C. DIBBLE, *Judge.*

Petition and order for suspensive appeal. Filed, December 27, 1871.

859 Eighth District Court for the Parish of Orleans.

N. O., M. AND CHAT. R. R. Co.
vs.
THE CITY OF NEW ORLEANS, CHARLES MORGAN, Intervenor. } No. 4.

To the Honorable the Judge of the Eighth District Court for the Parish of Orleans:

The petitioner of the city of New Orleans respectfully represents:

That there is error to her prejudice in the final judgment ren-

dered herein; and that she feels aggrieved by such judgments, and is desirous of taking a suspensive appeal therefrom.

That by law the city of New Orleans is dispensed from giving bond and security.

The premises considered, petitioner prays that she be allowed a suspensive appeal, returnable to the supreme court of the State of Louisiana on the 3d Monday in January, 1872, without bond and security; and that the New Orleans, Mobile and Chattanooga Railroad Company, Charles Morgan, the State of Louisiana, Simeon Belden, attorney general of said State, and
860 all other parties interested in the judgment herein rendered, be cited to appear and answer this appeal.

And as in duty bound petitioner will ever pray.

(Signed) GEO. S. LACEY,
City Attorney.

Order.

Let a suspensive appeal be allowed the city of New Orleans, returnable before the honorable the supreme court of the State of Louisiana, on the third Monday of January, 1872, without bond and security; and let all parties be cited to appear and answer said appeal as prayed for, and in accordance with law.

New Orleans, December 27, 1872.

(Signed) HENRY C. DIBBLE,
Judge.

Agreement. Filed January 25th, 1872.

Eighth District Court for the Parish of Orleans.

N. O., M. and Chat. R. R. Co.
vs.
City of New Orleans *et als.* } No. 19.

861 It is agreed that the plans and maps offered in evidence in the district court by any of the parties shall be carried up to the Supreme Court with the transcript of appeal, and be deemed a part of the transcript of appeal.

January 23d, 1872.

(Signed) J. A. CAMPBELL,
Attorney for Plaintiff.

(Signed) GEO. S. LACEY,
City Attorney.

862 Supreme Court of the State of Louisiana, Clerk's Office, New Orleans, May 4th, 1874.

NEW ORLEANS, MOBILE, AND CHATTANOOGA R. R. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 3701.

Appeal from the —— District Court for the Parish of ——, on application for rehearing.

Mr. Justice Howell delivered the opinion and decree of the court in the words and figures following, to wit: The plaintiff company enjoined the city of New Orleans from leasing or selling and from interfering with plaintiffs in occupying and enjoying, holding and acquiring, certain lands granted to the plaintiffs and described in the following clause of section 15 of act No. 26 of 1869, to wit: "and there is hereby granted to the said company the right to locate, construct, maintain, and use a passenger depot, with offices and apartments suitable for its legitimate business, upon the part or portion of the levee or streets, and grounds in the city of New Orleans, bounded by Canal, Delta, and Poydras streets, and a line parallel to and one hundred and
863 fifty feet easterly from Delta street, and for the construction of a freight depot and for other purposes of its legitimate business, to inclose and occupy the blocks of ground, parts of streets, and portion of levee in said city, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street; provided, said company shall not enclose or occupy that part or portion of the blocks of ground within said last-named limits, which is the private property of individuals, until said company has acquired the title thereto." The plaintiffs allege that they have acquired by purchase all of the private property within the boundaries of the said grant.

The only answer filed by the city to the original and supplemental petitions of plaintiffs in this suit is a general denial, the other answers are to the intervention of Chas. Morgan, and this branch of the suit has been disposed of and it is not before us, but the question presented and discussed by both parties is the right of the State to make the said grant, the city claiming to be the owner of the said ground, subject only to a servitude in favor of the public as long as it may be needed for public
864 purposes, and the State asserting absolute ownership and control of the lands as *public places*.

If they be *public places*, in the ordinary legal signification of these words, it may be that the State has the control asserted. We will here inquire into the rights of the city to the lands. In 1820 the batture in that portion of the city was owned or claimed by the heirs and assignees of one Bernard Gravier, as riparian properties, and there being some difficulty with the city

as to the ownership and use thereof, the parties interested entered into a compromise by notarial act, in September of that year, by which it was stipulated that all lots of ground outside of a certain line should remain inalienable and be used for no other public purposes than those for which they are naturally destinated. When, in 1836, the city was divided into municipalities, it was provided that no disposition should ever be made of said batture in violation of said compromise, and that the second municipality, in which it was situated, should not obstruct the inhabitants of any portion of the city in the free use thereof. By the continued accessions this space of ground became inconvenient for public use, and in 1850 the Legislature repealed that portion of the act of 1836 prohibiting any disposition thereof, authorized and directed the second municipality to lay off two additional streets according to a certain plan; declared that the balance of the batture should be left open and so kept for the accommodation of the public and the convenience of commerce, and that, in the event of the agreement of the original parties to the said compromise for the sale of the said *batture*, it should be the duty of the second municipality to lay off in lots all not needed for streets and public purposes as above, and dispose thereof on terms to be agreed on, provided one-third of the proceeds should be appropriated to the general sinking fund of the city.

In pursuance of this act, the said parties, with the second municipality, which was represented by a committtee, agreed, by notarial act on 20 June, 1851, to change the destination of the said batture made in the compromise of September, 1820, that three streets should be laid out, certain squares divided into lots, and sold at auction within different periods of time and on specified terms, which sale should be binding on the parties then contracting with the second municipality as vendors; that the proceeds be divided into three parts—one to be paid to the said original parties, one to the general sinking fund of the city, and the other into the treasury of the second municipality; that three specified squares be reserved for market houses, and what portion not divided into lots for sale should be in the language of the act, "vested in perpetuity and full ownership in the said municipality No. 2, in favor of whom the said parties then contracting therewith ceded and relinquished forever all their claims in and to the said batture, as well as all and every enlargement thereof or accretion thereto by new formations."

It is by this act, it is contended, the city, which has succeeded to the rights of the second municipality, acquired the title to and full ownership of the ground now in controversy.

The title, it would seem, was thereby vested in the city, so far as the original owners, parties to the above act, could confer it,

and the property is under the exclusive control of the city, as owner for the benefit of the inhabitants, and subject to
867 the servitude in favor of commerce, if needed, unless there is in law some such relation between the municipal corporation and the State as makes all property acquired by the corporation the property of the State, subject to its control. Is this so?

A municipal corporation is appropriately defined to be "the investing the people of a place with the local government thereof," (Salk., 183.) It has no powers not conferred upon it expressly, or by fair implication, by the law of the State creating it, or statutes applicable to it. Both the persons and the place inhabited by them are indispensable to the constitution of such corporation. It is an agency to regulate and administer the internal concerns of a locality in matters peculiar to the place incorporated and not common to the State or people at large. But duties and functions may be and are conferred and imposed, not local in their nature. It possesses two classes of powers and two classes of rights—public and private. In all that relates to one class, it is merely the agent of the State, and subject to its control; in the other, it is the agent of the habitants of the place; the corporators maintain the character and relations of individ-
868 uals, and is not subject to the absolute control of the legislature—its creator. Among this latter class is the right to acquire, hold, and dispose, to sue and be sued, etc. It is true that these rights are originally derived from the legislature, but once conferred they are to be exercised, while it exists at the will of the corporation, in its own and as to its own interest, for the inhabitants, just as certain rights are conferred on private corporations and persons not *sui juris*, as minors and married women, but are not afterwards under the control of the legislature, (Dillon on Municipal Corporations, 2d Ed., Chap. 11, secs. 9 A to 10 A, Chap. IV, secs. 3840, and notes; Cooley's Constitutional Limitations, pp. 235–6, 238.)

In sec. 39 Mr. Dillon says: "It may assist to an understanding of the extent of legislative power over municipal corporations proper, (incorporated towns and cities,) to observe that these, as ordinarily constituted, possess, according to many courts, a double character—the one *governmental, legislative* or *public;* the other, in a sense, *proprietary* or *private.* The distinction between these, though sometimes difficult to trace, is highly important, and is frequently referred to, particularly in the cases relating to
869 the implied or common law liability of municipal corporations for the negligence of their servants, agents, or officers, in the execution of corporate duties and powers.

"In its governmental or public character the corporation is made, by the State, one of its instruments, or the local depository of certain limited and prescribed political powers, to be exercised

for the public good, on behalf of the State, and not for itself. In this respect it is assimilated, in its nature and functions, to a county corporation, which, as we have seen, is purely part of the governmental machinery of the sovereignty which creates it; over all its civil, political, or governmental powers, the authority of the legislature is, in the nature of things, supreme, and without limitation, unless the limitation is found in some peculiar provision of the constitution of the particular State. But, in its proprietary or private character, the theory is that the powers are supposed not to be conferred primarily or chiefly from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct *legal personality*, and as to such powers and to property acquired thereunder, and contracts made with reference thereto, the corporation is to be regarded as *quo ad hoc*, a private corporation, or, at least, not public in the sense that the power of the legislature over it is omnipotent."

Mr. Cooley, at page 238, says:

"The rule upon the subject we take to be this: where corporate powers are conferred, there is an implied compact between the State and the corporators that the property which they are given the capacity to acquire for corporate purposes under their charter shall not be taken from them and appropriated to other uses. If the State grants property to the corporation, the grant is an executed contract, which cannot be revoked, The rights acquired either by such grants, or by any other legitimate mode, in which such a corporation can acquire property, are vested rights, and cannot be taken away."

In 29 Vermont, p. 12, it was said:

"But while the legislative power (to enlarge, restrain, or even destroy municipal corporations, as the public interested may require) may be exercised over public municipal corporations, it has uniformly been held that towns and other public corporations may have private rights and interests vested in them, under their charter, and as to these rights, they are to be regarded and protected the same as if they were the rights and interests of individuals or private corporations."

In 18 Cal., 590, Mr. Chief Justice Field, as the organ of the Court, takes the ground that the real estate or private property of a municipal corporation is protected by the clause in the National Constitution securing the inviolability of contracts; that all legislative authority over it must be exercised in subordination to this guaranty, and that it is subject to legislative control to the same extent, but no greater extent than all other property in the State.

In 9 Cranch, (11 S.,) 336 and 52, Mr. Justice Story expresses the

opinion that, "in respect to public corporations which exist only for public purposes, such as counties, towns, cities, &c., the legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them, securing, however, the property for the uses of those for whom and at whose expense it was originally purchased." This is reiterated by Chancellor Kent, (2 Com., 305,) and by Mr. Justice Washington, in the Dart-
872 mouth College case, (4 Wheat, 518, 663.)

In this last case Mr. Justice Story, at p. 694, says: "But it will hardly be contended that even in respect to such corporations, the legislative power is so transcendant that it may, at its will, take away the private property of the corporation or change the uses of its private funds acquired under the public faith."

In 18 L., 213, it is said: "Urban property fronting on a water course is entitled to alluvion as well as rural estates, and cities may require *jure alluvionis*, but it must be as proprietor of the front or riparian proprietor." (See also 10 A, 54, and 7 A, 505.)

We are aware that very different views have been expressed by very high authority, and that some of the authors and jurists from whom we have quoted have used language susceptible of a different construction, and declared the division of municipal powers into public and private unsatisfactory; but, after a careful consideration of the opinions of both sides, we have come to the conclusion that a municipal corporation may own property,
873 to and over which the legislature has, while such corporation exists, no right or control, in opposition to, or independently of, the will or consent of the corporation, and we think this is consonant justice.

There is a principle involved in it—the principle that those who have to pay should have a voice in the disposal of what is paid for—a principle which is a barrier to centralized or organized power—a principle that protects every person in the control of his private affairs—a principle which the judiciary is intended to maintain. The theory or argument that the legislature has absolute ownership and control of all the property, and rights of a municipal corporation, because the corporation is represented in the legislature, is not conclusive.

Such representation is only in matters properly within legislative action, just as the representation of all other portions and inhabitants of the State.

The private rights of the corporation are as much protected as those of individuals. And it is a fact manifest to all, that the incorporation of such a city as New Orleans is a necessity. The multiplying and complicated interests of the compact and increasing community are such that the legislature cannot
874 administer them, and some of them are of such a nature as not to be within mere legislative action, but are to be conducted under general rules, thus necessitating the creation of

an intellectual body, with something more than governmental functions, but which do not constitute an *imperium in imperio.*

If then, a municipal corporation can acquire the fee simple of property, we think the squares intended for the depots of the plaintiffs were so acquired, and thus cannot be taken by the legislature while the city corporation exists. The legislature expressly recognized and ratified the compromise of September, 1820, in which the parties awarding or destinating acted as *riparian proprietors,* and in that act, 257 of 1850, the section of the act of 1836 prohibiting the violation of said compromise was repealed, and the municipality No. 2 was authorized to enter into an agreement with the said parties "for the *sale* of said *batture*" on certain conditions, which were complied with. If it be urged that the third section of said act of 1850 required the portion not laid off into streets to be kept open forever for com-
875 merce, the answer is that act No. 333 of 1853 authorized the withdrawal therefrom of such as may be needed for public uses, and this has been done by the city (which cannot sue itself) in the subsequent laying off of other streets and selling two and a half squares in the block of squares nearest the river, and which have been purchased by the plaintiffs; all this is recognized by the Legislature in the act under which plaintiffs now claim, by requiring them to purchase and by them in making the purchases. While this legislation may be construed as making such recognition, it can be invoked in aid or support of the power to make this grant, only on the theory that the city owned the property simply as the agent of the State; a theory which we do not adopt as to this property, because we think the city can own private property, and that the former owners intended to and did, by the act of 20 June, 1851, transfer the title thereof to the city, subject only to uses of commerce and of the public, while so needed.

And such must have been the opinion of the plaintiffs when they made the offer, which they allege, to purchase a part of this very ground from the city, about the time this suit
876 was instituted; and their petition seems to be constructed on the hypothesis that the city had such rights to the said property as to make a resort to the laws relative to expropriation necessary.

The act of 1850 may have been necessary to give the municipality No. 2 the authority to enter into an agreement with the owners, but the power having been exercised, and the conditions complied with, the title of said parties (*which was recognized in the said act*) vested by the notarial act of June, 1851, as we think, in the municipality, which then took the place of the said former owners, with all their rights, including the right to bring into commerce such portions as might become necessary for public use.

It is contended, however, that the case of Parish *vs.* Munici-

pality, 8 A, 145, fixes the character of the ground in question as a *locus publicus*, in the technical sense of this term, and intimates that so much of the act of 1850 as may confer any rights upon the municipality, is unconstitutional. An examination of that case will show that the matter in controversy was the servi-
877 tude of suer, was claimed by plaintiff, and that the case went off on an exception, that the plaintiff had no cause of action. The right therein asserted, of the Legislature to change the destination of a portion of the batture previously dedicated to the public use, is not denied, but this is not inconsistent with the right of the riparian proprietor to sell his property and his right, or that of his vendor to withdraw that property from the position of a *locus publicus* when not needed as such under existing legislation.

The antecedent cases had reference to the legislation and the rights of parties thereunder prior to the act of 1850, and the transfer of June, 1851, under which the rights of the city have been acquired. But in these cases the rights of riparian proprietors to the batture were recognized, subject to a public servitude, and the *ownership* of the city as against said proprietors was denied. Judge Martin, however, in 18 L., 249, contended that the formation in front of the city did not belong to the owners of the lots along a certain line, but vested in the city, and he insisted that his views were sustained by the de-
878 cision of the United States Supreme Court in 10 Peters, 662. The majority of the court decided in favor of the riparian proprietors, and we think these parties have conveyed their rights to the portion of the batture now in controversy to the city for its inhabitants; that these rights are protected by the constitution now just as those of the former owners were; the city having the capacity to own property for the exclusive use and benefit of the inhabitants, and having acquired all the rights of the former owners, and that the city or inhabitants cannot be compelled to contribute the squares of ground in question to the plaintiffs without compensation, whether they will or not make such contribution voluntarily in consideration of the benefit resulting from the establishment of the railroad is a question not pertinent here. We are to pass only on the legal rights of the parties. In our opinion the injunction improperly issued in this case. But as the city has made no claim against the the plaintiffs, our former decree was erroneous in granting the demand in reconvention and inhibiting the plaintiffs from occupying the property in controversy. Under the pleadings,
879 all we can do is to render judgment in favor of the city, dissolving the injunction, and dismissing plaintiffs' suit, leaving the parties to their rights under the laws relative to the expropriation of property.

It is therefore ordered that our former decree be set aside; and

it is now ordered that the judgment appealed from be reversed, and that there be judgment in favor of the defendants, the city of New Orleans, dissolving the injunction herein and dismissing plaintiffs' suit, with costs in both courts, without prejudice to the rights of the parties under the laws of expropriation.

Mr. Justice Wylie concurs in this decree for the reasons given by him in the former opinion of the court.

A true copy.

WM. DUPRE.
Dep'y Clerk.

880 *Agreement as to Transcript. Filed Sept.* 18, 1883.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE AND NASHVILLE R. R. Co.
} No. ——. U. S. Circuit Court.

It is agreed that the statutes which the parties desire to be included in the record shall be copied, filed with, and treated as part of the record, and printed in whole or in part, as the parties may determine.

(Signed) MILLER & FINNEY,
For Board of Liquidation.

Aug. 19, 1883.

I have designated the portions of statutes to be copied in the record. I have no objections to have any or all of them copied as above; and when the record is to be printed we can determine as to the parts to be printed, as you suggest.

(Signed) THOS. L. BAYNE.

In making the transcript in this case, the clerk shall omit all acts of the Legislature of Louisiana, except the caption of act No. 20 of 1882, sections 8 and 28–78, and approved by Governor June 23d, 1882; act No. 81 of 1882, caption or title of act No. 26 of 1869, Sec. 15; act No. 28 of 1868, title first, ninth paragraph of Sec. 2; act No. 31 of 1870 title, section 5 down to the
881 and including words "all compensation therefor;" Sec. 6 to words, from its depots. And either party may print in appendix to briefs any other statutes, or parts of statutes, offered in evidence or relating to the controversy.

The ordinances offered in evidence and furnished to constitute part of transcript with an agreement that either party may print in appendix any ordinances offered which were not furnished or copied.

The transcript will include petitions, interventions, answers, reconvential demands, and exceptions, annexes to petitions, writs of injunctions, mem., or orders of transfer from court to court, widen they occur, opinions and judgments of the lower court with the petitions or motions, appeal in the cases of the N.

O. M. and C. R. R. Co. *vs.* City of N. O. and *als*, No. 738, of the 5th district court, No. 4, of the 8th district court, judgment and appeal No. 3701 of the supreme court of La., with answer of city, p. 383, and agreement as to supplemental answer, 383. Answer to Morgan's petition of intervention, p. 376 to 383. The same *vs.* same, No. 19th of the 8th district court, and on appeal
882 3692 of supreme court of Louisiana, including opinion and judgment or decree; also agreement of the 8th district court in case No. 4 on the trial of issues p. 385 of record 1421, and other parts of record, No. 1421, need not be copied into transcript, but either may add any part prior to fixing case for trial, Record, No. 7972.

The petition, exception, answer, order for transfer, evidence thereon with records No. 4 and 19 of 8th district court, or superior district court No. 3692 of Sup. Court and judgments therein as provided for in another part of this agreement. The plans referred to in this case, may be referred to and used by either party. Resolutions of Board of Liquidation of 13 Oct., 1882, and subsequent resolution of 17 Oct., 1882. The act of compromise made by city of N. O and the N. O. M. and T. R. R., and L. and N. R. R., Oct. 11th, 1882, with the ordinance of city counsel attached, and stipulation agreed by the city attorney for dismissal of appeal. Exhibit 2.

The testimony of all witnesses as per minute of evidence and documents filed in this case, the map A referred to by Pilié in testimony, and map B by Hoey, to go up as original or
883 attached to record as most convenient. The other maps in No. 144 to be used as agreed upon. The petition of the Board of Liquidation to the Sup. Court in suit (7972) 144 Sup. Court, and all orders of the Sup. Court on that application. The petition, exception, bill, answer, replication and answers showing trial, the opinion and decree in this case, with notes of evidence.

Act before H. Lavergne 20th September, 1820, the translation to be copied from p. 408 to 416, of record 144. Compromise before H. B. Cenas, N. P., 30th June, 1851. Acts of sale to N. O. M. and C. R. R., 1st February, 1868. 13th February, 1868, before H. C. Dibble, N. P., all the admissions contained in the minutes of evidence or otherwise.

It being understood that the printed record, No. 144, (now No. 71,) the city of N. O. *vs.* N. O. M. and T. R. R. Co., shall be used to copy any testimony or document to be included in the transcript whenever the document and the testimony not in record. Either party may add any testimony or papers offered before the record is completed and printed, or may print same in his brief.

(Signed) BAYNE & DENEGRE,
Solicitors for Defendant.

884 The complainant agrees to the above with the addition that the record shall embrace the judgment of the Supreme Court in the cases No. 3692 and 3701, and all legislative acts bearving on the controversy printed in the brief and referred to, whether in the record or not, are to be as a matter of course deemed before the court on the appeal, the record also to embrace judgment in U. S. Circuit Court 7992, and petition, motion, and order for appeal.

(Signed) MILLER & FINNEY.
BAYNE & DENEGRE,
For Defendant.

Act No. 20, of 1882, to incorporate the city of New Orleans, provide for the government and administration of the affairs thereof; and to repeal all acts inconsistent and in conflict with its provisions. Due public notice having been given according to requirements of Article 48 of the Constitution.

SEC. 8. The council shall also have power (1) to order the ditching, filling, opening, widening and paving of the public streets and to regulate the grades thereof; (2) to regulate the public cemeteries, to order the manner of conducting the
885 same and to order the closing of same; (3) to compel the owners of any lot or lots to fill the same to a grade above the grades of the streets and to construct drains or gutters; (4) to improve and embellish public squares and parks and places; (5) to prescribe and collect wharfage and levy dues and to erect sheds over the wharves and buildings to protect merchandise, and make such charges therefor as will pay for the construction, keeping in repair, lighting and policing of such wharves and sheds and no more. The council may lease or farm out the wharves and landings in sections for a period not exceeding ten years to such persons as will bind themselves with security to construct and keep in good repairs such wharves and landings, and construct and keep in repairs sheds over the wharves, and light the same, and pay for the cost of policing the same for such just and reasonable charges on vessels and merchandise, or either, for the use of the wharves and sheds as may be fixed in advance by the council, and with such specifications as may be
886 required by them. The council shall power (6) to compel the owners of property or tenants to keep their sidewalks in front of such property clean and in repair; (7,) to prevent explosive and dangerous substances from being stored or kept in dangerous quantities in the city, to designate the places where such dangerous articles may be stored, and to regulate the manner of hauling and keeping explosive substances; (8,) to determine within what limit wooden buildings shall not be erected, and to prevent the reconstruction in wood of old buildings within such limits; (9,) to regulate the safety height and thickness of the walls and

structures; (10,) to determine what animals shall not be permitted to rove in the limits of the city, and to cause them to be killed or to be confined and sold when found to be roaming at large; to regulate the police of theatres, public balls, dance-houses, concert saloons, taverns, hotels, houses of public entertainment, shops or places for retailing alcoholic liquors, houses of prostitution and assignation, and to exclude such houses from certain limits, and shall have power to close the same,
887 and to close houses and places for the sale of intoxicating liquors when the public safety may require it, and to authorize the mayor and police to close such places; (12,) to close all gambling houses, and to expel from the city and to imprison all bunko men, fraudulent or unauthorized lottery men, common cheats and swindlers, beggars, and dangerous and suspicious characters; (13,) have the power to authorize the use of the streets for horse and steam railroads, and to regulate the same; to require and compel all lines of railway or tramway in any one street to run on and use one and the same track and turn-table; to compel them to keep conductors on their cars, and compel all such companies to keep in repair the streets, bridges, and crossings through or over which their cars run; (14,) to lay off and sell in lots or squares so much of the batture from time to time as may not be required for public purposes; but the right of accretion or to future batture shall never be sold; (15,) to establish jails, houses of refuge, reformation, and correction, and make regulations for their government, and to exercise a general police power in the city of New Orleans.

888 SEC. 28. That all the rights, titles, and interest of the city of New Orleans, as now existing in and to all lands, tenements, hereditaments, bridges, ferries, streets, roads, wharves, markets, stalls, levees and landing places, buildings, and other property of whatever description and wherever situated, and with all goods, chattels, moneys, effects, debts, dues, demands, bonds, obligations, judgments and judgment liens, actions and rights of actions, books, accounts, and vouchers, be, and they are, hereby vested in the city of New Orleans, as incorporated by this act.

SEC. 78. All laws in conflict, inconsistent or contrary to the provisions of this act, be, and the same are, hereby repealed.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.
GEO. L. WALTON,
President pro tem. of the Senate.

Approved June 23, 1882. S. D. McENERY,
Governor of the State of Louisiana.

A true copy.
WILL. A. STRONG,
Secretary of State.

Act No. 81, of 1882, entitled an act to authorize the city
889 of New Orleans, in the sale or lease of franchise or right of way for street railroads or other privileges, to apply the price paid for the same in the performance of works of public improvements, of a permanent character, such as paving streets, embellishing parks, &c.

Whereas notice, as required by article 48 of the constitution, has been given of the intention to apply for the passage of this act; therefore,

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That hereafter, whenever the city of New Orleans, through her proper authorities, shall contract with private corporations or individuals, for the sale or lease of public privileges or franchises, such as the right of way for street railroads, or for other public undertakings within her legal power or control, the price paid for the sale or lease of public privileges or franchises, shall be applied by said city in the performance of works of public improvement of a permanent character, such as paving streets, embellishing parks, &c.

SEC. 2. Be it further enacted, etc., That all laws or parts
890 of laws, and especially so much of section 10, of act No. 31, acts of 1876, known as the Premium Bond act, and of section 5, of act No. 133, acts of 1880, as may be in conflict herewith, be, and the same are, hereby repealed.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.
GEO. L. WALTON,
President pro tem. of the Senate.
Approved July 5th, 1882. S. D. McENERY,
Governor of the State of Louisiana.

A true copy.
WILL. A. STRONG,
Secretary of State.

Act No. 26, of 1869, to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana.

SEC. 15. Be it further enacted, etc., That the said company, with the consent of the owners of lands fronting upon any navigable water course, or after such lands have been acquired by the company by purchase, release, donation, or in any manner, in accordance with the laws of the State of Louisiana, may erect, construct, and thereafter maintain and use wharves, ware-
891 houses, depots, or other buildings and structures, in and upon the margins, or upon the portions of the margins reserved to public use, of any and all navigable rivers, bayous, or water courses in the State of Louisiana, whenever the same may be deemed by a majority of the directors of the company neces-

sary and requisite for the legitimate and convenient transaction of its business. And within the limits of incorporated cities or towns, the mayor and a majority of the council of such city or town may authorize the construction of said wharves, warehouses, depots, or other buildings and structures in front of all public squares or streets that may be bounded by such navigable water course. And be it further enacted, That the officers, agents, and servants of said company be, and they are, hereby exempted from jury duty, and from military duty, except in case of insurrection or invasion. And be it further enacted, That the said company, for the purpose of connecting its railroad with the railroad of other companies, and with mines and manufactories within the State of Louisiana, is hereby authorized and em-
892 powered to construct, maintain, and use, by running thereon its engines and cars, such branch railroads and tracks as it may find necessary and expedient to own and use; and also to extend, with two tracks and necessary turnouts, its railroad heretofore authorized by the State of Louisiana, upon the neutral ground in Claiborne street, in the city of New Orleans, upon and along said neutral ground in Claiborne street to Toledano street, in said city, thence by such a course or route as shall be deemed most proper and expedient by a majority of the directors of said company to a junction with the line of the railroad which the said company has been heretofore authorized, by the State of Louisiana, to construct westerly from the city of New Orleans; *provided, however*, that for its crossing of the new canal in the city of New Orleans, the said company shall construct and maintain a drawbridge in the same manner as has been heretofore authorized by the State of Louisiana for the crossing of Carondelet canal by the railroad of said company; and there is hereby granted to the said company the right to locate, construct, maintain, and use a passenger depot, with
893 offices and apartments suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the city of New Orleans, bounded by Canal, Delta, and Poydras streets, and a line parallel to one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot; and for other purposes of its legitimate business, to inclose and occupy the blocks of ground, parts of streets, and portion of levee, in said city, bounded by Girod, Water, and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street, *provided* said company shall not inclose or occupy that part or portion of the blocks of ground within said last-named limits, which is the private property of individuals, until said company has acquired the title thereto; and said company shall thereafter, if requested by said city, extend the wharf in front thereof equal with the present wharf in front of the northerly corner of the outer block within said

limits, recently sold by said city and now owned by said company.

Act No. 28 of 1868, relative to the New Orleans, Mobile,
894 and Chattanooga Railroad Company, a corporation of the State of Alabama, and authorizing and empowering said company to exercise and enjoy its corporate powers and franchises in the State of Louisiana.

First. To locate, construct, and build, and thereafter to own, maintain, and use, by running thereon its engines, cars, and trains of cars, a railroad with one or more tracks and suitable turnouts from any point between Delta street and the levee in the city [of] New Orleans, along and upon the levee in said city or along and upon a street or streets near the levee, as may be deemed most proper and expedient, provided that the grounds and buildings now owned by the Pontchartrain Railroad Company, or any other railroad company, between Girod, Poydras, Delta, and Water streets, shall not, in any manner, be interfered with, to a point at or near the junction of the levee and Spain street, thence by a curved line to Enghein street, thence along and upon Enghein street and Lafayette avenue to Claiborne street, and thence upon such a course or route as may be
895 deemed by a majority of the directors of said company most proper, expedient, or necessary and best adapted for the public accommodation, to any point on the line between the State of Louisiana and the State of Mississippi, and thence extending the same through the States of Mississippi and Alabama to the city of Mobile in the State of Alabama, and thence to other places, as provided in said act of incorporation: *Provided*, That, in the construction of that part of said railroad and tracks and turnouts thereof between Calliope street and Claiborne street, the said company shall not in any manner obstruct or impair the drainage of the streets along, upon, or across which the said part of said railroad is hereby located; and that the said company shall, at all times, in the construction and maintenance of the said part of said railroad, conform with the levels and grades to be established by the city surveyor of New Orleans; and whenever the company shall find it necessary to cover the channel of any drain, the sides thereof shall be first protected with
896 bricks or wood in a good and substantial manner, and such covered channel shall be kept in repair, open and clear for the passage of water, by said company; and the said part of said railroad shall be so constructed and maintained as not to, in any manner, unnecessarily impair the usefulness of any street or impede the traffic thereon.

Ninth. That the said company is hereby authorized and empowered to obtain by grant or otherwise, from any incorporated city or village within the State of Louisiana, that may be situ-

ated upon its railroad, any rights, privileges or franchises that any of said incorporated cities or villages may choose to grant in reference to the construction, maintenance and management of the railroad of said company, its depots, cars, locomotives and its business within the limits of such, or any of said incorporated cities and villages; and any such incorporated city or village as hereinbefore named is hereby authorized and empowered to grant to said company any such rights, privileges and franchises as it may deem proper and advisable; and such
897 rights, privileges and franchises when granted to and accepted by said company from any such incorporated city or village, shall be deemed and taken as rights, privileges and franchises vested and confirmed in said company, and not liable to be hereafter revoked, changed, injured or impaired, except with the consent of said company, and the rights, privileges and franchises, which have been heretofore granted to said company by the city of New Orleans, are hereby recognized, approved and vested and confirmed in said company, subject to all the benefits and provisions of this act.

Act No. 31, of 1870, relative to the New Orleans, Mobile and Chatanooga Railroad Company, and to regulate judicial proceedings in certain cases under the charter of the said company, and the laws of this State relative thereto heretofore passed, and to declare and define the powers and liabilities of the said company, and to facilitate and aid by grant of bonds the construction and secure the maintenance of the railroads of the said company within the State of Louisiana, and
898 to appropriate certain lands in the city of New Orleans, for public use, and to provide for the building of one or more branches to the main line of said railroad.

SEC. 5. Be it further enacted, etc., That the grant made to the said company in and by the act, entitled An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana, "approved February 17, 1869, of the right to locate, construct, maintain, and use, a passenger depot, with offices and apartments suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the city of New Orleans, bounded by Canal, Delta, and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot, and for other purposes of its legitimate business to inclose and occupy the block of ground, parts of streets, and portions of levee in said city, bounded by Girod, Water, and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street:
899 provided said company shall not inclose or occupy that part or portion of the blocks of ground within said last-

named limits, which is the private property of individuals, until said company has acquired the title thereto," be, and the same is hereby, confirmed, and is declared to be, and is and shall be, in exclusion of any and all claim or claims on the part of the city of New Orleans to the possession, occupancy, use or disposition of, control over the said premises, or any part thereof, and for all compensation therefor.

SEC. 6. Be it further enacted, etc., That all that portion of the levee or streets and grounds in the city of New Orleans lying within the following-named limits or boundaries, viz.: The southerly or upper line of Canal street from the Mississippi river to the easterly line of Water street, the easterly line of Water street from the southerly line of Girod street, from the easterly line of Water street to the easterly line of the land designated for the location of the freight depot of the New Orleans, Mobile and Chattanooga Railroad Company, the easterly line of said
900 depot lands from the southerly line of Girod street to the northerly (or lower) line of the batture rights owned by said company, the northerly or lower line of said batture rights from said depot lands to the Mississippi river, and the Mississippi river from the northerly or lower line of said batture rights to the southerly line of Canal street, is hereby expressly dedicated to public use, and shall forever remain open for such use, and no part of said lands, or of the accretions and wharf in front of the same, shall ever be inclosed or built upon or granted for ferry landings, or exclusively appropriated or used by one individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans: *Provided*, however, that the said company may construct, maintain, and use, across or upon said lands, or any part thereof, its railroad tracks, turnouts, and switches, from its main tracks on Water street, as may be necessary for purposes of ingress to or egress from its depots.

901 United States of America, Circuit Court of the United States for Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 248 pages contain and form a full, complete, true, and perfect supplemental transcript of certain portions of the record and proceedings had in the case of The Board of Liquidation *vs.* The Louisville and Nashville Railroad Company *et als.*, which were inadvertently omitted from the main transcript of appeal. No. 10180 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 26th day of September A. D. 1883.

Nine (9) words erased; seven (7) words interlined. Approved.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Don A. Pardee, United States circuit judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 26th day of September A. D. 1883.

Three (3) words interlined. Approved.

DON A. PARDEE, *Judge.*

Endorsed on cover: E. Louisiana, C. C. U. S. No. 997. The Board of Liquidation of the City Debt, Appellant, *vs.* The Louisville and Nashville Railroad Company and The New Orleans, Mobile and Texas Railroad Company. Filed October 1st, 1883.

109-221

SUPREME COURT, U.S.
FILED
OCT 2 1883
JAMES H. McKENNEY, Clerk

U. S. SUPREME COURT.

No. 997

THE BOARD OF LIQUIDATION

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAIL ROAD COMPANY, ET. ALS.

Brief for the Board of Liquidation, Complainant and Appellant.

HENRY C. MILLER,
Solicitor for Complainant.

W. B. Stansbury & Co., print, 38 Natchez Street.

U. S. SUPREME COURT.

No. ——.

THE BOARD OF LIQUIDATION

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY, ET. ALS.

Brief for the Board of Liquidation, Complainant and Appellant.

STATEMENT OF THE CASE.

The Board of Liquidation, the appellant, appeared in this Court in October last, in the suit of the City of New Orleans, appellant, vs. the New Orleans, Mobile and Texas Railroad Company, then No. 17, now No. of the docket, to oppose the dismissal of the appeal in that suit, under an agreement of compromise between the City and the Railroad Company. That suit involved the title to certain real estate, known as batture property of the city. It was claimed adversely to the city, by the Railroad Company, under certain Legislative grants, and the issue in the suit, was the competency of those grants,

to divest the title of the city. The agreement of compromise proposed to dismiss the appeal, make final the judgment of the Circuit Court, in favor of the Railroad Company, against the city, and thereby confirm to the Company, the city property involved on the appeal. For all this the Mayor and Administrators were to receive $40,000 from the Railroad Company, Record pp. . The opposition in this court of the Board of Liquidation, to the execution of this agreement, by dismissing the appeal was, that since the appeal was taken the Legislature of Louisiana had stripped the Mayor and Administrators of New Orleans, of power or control of all property of the city, not dedicated to public use; had charged such property with a trust in favor of the bond creditors to secure the payment of the bonded debt; had created and vested in the Board of Liquidation the title to all such property, for the purposes of the trust, and that the appeal proposed to be dismissed by the Mayor and Administrators, without the concurrence and against the will of the Board. involved property of that class. charged with this trust and conveyed to the Board. The Board asked, also, that it be admitted of record to prosecute the appeal in the lieu and stead of the city, the interest involved having passed from the city to the Board. The order of this Court, then made was, that the appeal should not be dismissed, but should stand over, until in a court of original jurisdiction, the Board should have the opportunity to assert its title to oppose the execution of this compromise. That suit has since been brought, determined, and from

the judgment adverse to the Board, this appeal is taken, see bill answer judgment, p. 1, R. pp. ; of the United States Circuit Court.

If the Board of Liquidation is clothed with the title for the purposes of the trust, to the property involved in this liquidation, its interest to oppose the dismissal of the appeal will hardly be questioned. That dismissal, if accomplished, will make final the judgment of the United States Circuit Court, rendered long before the Board was created, and which adjudges to the New Orleans, Mobile and Texas Railroad Company, property of very great value, the title to which is in this Board, if on the appeal that judgment is set aside. It will naturally occur, that the title to that property, if, thus changed since the appeal was taken is to be litigated with the Board, not the Mayor and Administators. If the position of the Board with respect to the title is correct, it will follow, that it is not for the Mayor and Administrators to act in the matter at all, and with or without the $40,000 stipulated to be paid to them, agree to the dismissal of an appeal, in which they have no interest whatever. It is enough, on this branch of the case, if the Board of Liquidation exhibits its title to the property involved on the appeal, and the trust with which the property is charged, to defeat an agreement entered into by the City Administrators without right, by which if consummated by the dismissal of the appeal, the Railroad Company will acquire property of great value, to the prejudice of the trust created by the Legislature, and in disregard of the title of that corporate body, no party to

the agreement, it now confronts, and the execution, which it asks the aid of this court to arrest. Passing by this issue of interest in the Board, as plainly apparent, if other propositions can be maintained, those other propositions would seem to be; has the Legislature of Louisiana, since this appeal was taken, pledged all the available resources of this city. i. e., all property not required for the public uses to the payment of the bonded debt? next, has it vested title in this Board of Liquidation, to that property, for the purposes of the trust, and lastly, does this appeal, which for the money consideration stipulated, the Mayor and Administrators propose to dismiss, involve property charged with the trust and conveyed to the Board. The facts, necessary to elucidate these propositions will now be presented.

The Board of Liquidation of the city debt, was created by the act of the Legislature of Louisiana, No. 133 of 1880, Appendix, p. 2. It was charged with the entire control of the bonded debt of the city, with the view to the liquidation and settlement of the debt. For all purposes of that debt, the application of the taxes for bonds, and of the property and assets dedicated to the payment of the bonded debt, all powers hitherto possessed by the ordinary city authorities, were completely withdrawn from them and vested in this Board. The levy of the taxes for the bonded debt, was, necessarily left with the Mayor and Administrators. But there their functions ended with respect to the bonded debt, and everything connected

with it. Those functions taken from the Mayor and Administrators, were confided to the new body, created by the Legislature, i. e. the Board of Liquidation of the city debt. The taxes for the bonded debt were to be turned over to the Board when collected. The act pledged to the reduction and retirement of the bonded debt, "all property of the city, both real and personal, not dedicated to the public use. All such property, the act enacted, shall be turned over by the city authorities to the Board of Liquidation, to be disposed of by the Board, proceeds to be applied to the bonded debt. See act of 1880, No. 133; Appendix, p. 2, Sec. 1, 2. 5, p. 8.

Prior to the act of 1880, the Legislature had enacted that no city property of any kind shall hereafter be sold or conveyed in any manner, except the proceeds be applied to the reduction of the bonded or floating debt. Acts of 1876, p. 54; Appendix. p. 1.

The Legislatnre of 1880, by another act, No. 74, made provision for the floating debt. See Appendix, p. 8. The act creating the Board, made the dedication of all property of this city, not devoted to public use, absolute in favor of the bonded debt, as expressed in the 8th section of the act already cited.

The legislation of 1880 is to be read, too, in connection with the 254th article of the State Constitution, adopted in 1879. The debt of the city had become extremly embarrassing. This court has had some occasion to know this. Taxes had been levied from year to year, but un-

collected, largely due to the impoverishment wrought by the war, and the disordered condition for years after. The result was, the public debts were unpaid. The city was quite frequently, the delinquent debtor before the courts. All realized that some effort should be made to discharge the public obligations and restore the credit of the city. Under this pressure, the Constitutional Convention of 1879 adopted Art. 254, as follows, in so far as it relates to this subject:

"The General Assembly at is next session, after the adoption of this Constitution, shall enact such legislation as may be proper to liquidate the indebtedness of the city, and apply its assets to the satisfaction thereof." See Constitution, Art. 254.

The act of the Legislature of 1880, was the response of the Legislature, to this mandate of the Constitution. It was the dedication of all the property of the city, of every kind and nature, not required for the daily functions of the city government, to the payment of the bonded debt, and the creation of the new corporate body, the Board of Liquidation to discharge the trust. For the purposes of the trust the Board was vested with the title to all such property with exclusive power of sale and disposition thereof, to fulfil the trust. The act creating the Board in its substance and form. follows the constitutional provision, the title of the act being, "to liquidate the indebtedness of the city, apply its assets to the satisfaction of its debts, to create a Board of Liquidation, to provide for a fiscal agent and for the levy of taxes, etc." Appendix, p. 2.

To mark more distinctly the legislative intention to sever the control of the bonded debt, the taxes, assets and property of the city, dedicated to its payment, the Board was to be composed of six citizens to be selected from bank and commercial circles, to which were added three members of the city government, as ex-officio members, so that the majority should be citizens, not at all connected with the city government. The Board, thus organized, when the city authorities, for the $40,000, undertook to enter into the agreement to dismiss the appeal, was, is now and has been ever since the act of 1880, in the performance of its functions. See Test, J. H. Oglesby, Rec., p. ; Test, Wolfle, p. .

The power of the Constitutional Convention of 1879, and of the Legislature of 1880, thus to direct the appropriation of all the assets and property of this city, to the payment of its debts, and providing the instrumentality by which that trust should be effected, was supplemented, if any addition was requisite by the ordinance of the Common Council of June 16th, 1880, concurring with the Legislative act, and providing for the carrying into effect of that act. See Appendix, p. 6.

The dedication to the bonded debt, and the title of the Board of Liquidation, exclusive and superseding all previous control or power of the Mayor and Administrators with respect to the property embraced in that dedication, thus exhibited, the next enquiry is, whether the appeal which the Mayor and Administrators undertake to dismiss,

involves and disposes of property of that class covered by the trust and conveyed to the Board.

The appeal involved the title to several squares of ground, known as batture property of the City of New Orleans, claimed by the New Orleans, Mobile and Texas Railroad Company, under Legislative grants, always contested by the city, until the Mayor and Administrators thought proper to take $40,000, and agree to dismiss the appeal. See Bill, answer and decree; Record, p. , Acts 1869, No. 26; Acts 1870, No. 31; App., pp. 31, 34. These squares of ground involved in the appeal, are exhibted by the map A. brought up with the appeal, and to which the court is referred. The squares are as follows: The lower half of square in front of Pilie street and between Julia and St. Joseph streets; the square in front of Pilie street and between Notre Dame and Julia streets; the square in front of Pilie street, and between Girod and Notre Dame streets and the square between Water, Pilie, Girod and Notre Dame streets being square 27 A., all as delineated in the map, on which is drawn the line of the grants to the Railroad Company, within which these squares of city property are enclosed. The issue then on that appeal, is whether these squares can be claimed by this Company under Legislative grants, contested in that suit, or whether those squares do not now, as they have ever since the city laid them out into squares, as its property, to be sold for its benefit, belong to this city. It is

enough, it is submitted for this Board, to show that to be the issue. If the squares belong to the city, i. e., if its title has not been divested, they belong to the Board of Liquidation. The Board is manifestly the party, with whom that issue is to be tried. That is all it claims. The character of the squares in dispute, exhibited by the Record, it is believed, is enough without going further to entitle the Board to the rejection of the motion to dismiss the appeal, and to be admitted to contest the pretensions of the Railroad Company in that suit, the appeal in which it seeks to dismiss, under its compromise and payment of $40,000. to the Mayor and Administrators.

But to go further as to the character of this property. Batture is the accretion to the shore, made by the sediment deposited by the river. It belongs to the front proprietor, subject to his obligation to yield up, sufficient space for roads and levees. Whenever, therefore, the batture becomes more than enough, for the uses of commerce, the surplus belongs to the front preprietor. Civil Code, Article 509. Many years ago the City of New Orleans succeeded to the title of the riparian prorietor to the batture, then existing, or that which might be formed thereafter, to the river front of the faubourg St. Mary, i. e., above Canal street, delineated in the map. See compromise of 1851, Appendix pp. 28, 31; 26th Ann., p. 479 ; Appendix p. . By that compromise, the batture inside of Delta street, was divided into squares by the projection of three streets, Fulton, Front and Delta streets, through the batture. The squares were

sold and proceeds divided, two-thirds to the city and one-third to the riparian proprietors. Even then the city, under a previous compromise of 1820, asserted rights as a private proprietor to the batture inside the line of Delta street, and received, as stated, two-thirds of the proceeds of such batture squares. See compromise 1820, App., p. 20; Ibid. of 1851, p. 30. But as to the batture outside of Delta street, the conveyance to the Second Municipality. to whose title the city has succeeded, was absolute. The conveyance of the riparian proprietors to the city, was as follows: *And that all the portion of the batture between Delta street and the river Mississippi above Lafayette street to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be and the same is hereby vested in perpetuity and full ownership in the said Municipvlity No. Two, in favor of whom said appearers to this act hereby cede and relinquish forever all their claims in and to the batture, as well as all and every enlargement thereof or accretion thereto by new formations.*

Under the title of full ownership, the city, since 1851, as it had the undisputed right to do, has projected three streets through part of the batture, outside of Delta street, thus acquired. These streets projected since 1851, are Water street, Pilie street and New street, laid out many years ago. See the map A., and testimony of Pilie. Record, p. . By this projection of streets, that batture embraced within them was withdrawn from public use, divided into

squares, for sale by the city as its private property. Much of it has been sold. Testimony of Pilie, Record p., . This Railroad Company bought from the city some of these batture squares, in the immediate vicinity of those the railroad company claims, under the grants. The batture squares in dispute here, are some of the squares laid out from the batture owned by the city, under the compromise of 1851. See Test, Williams Rec., p. —. Test. Pilie, Record, p. .

A general statute of the State authorizes the proprietors to sue for batture whenever the riparian title exists, and the batture, is larger than is required for public use. Acts 1853, p. 298. The city holding title to the batture above Canal, street, cannot sue itself, but by its act of dividing this batture into squares, it has done precisely what the judgment of the court in the suit of a proprietor would have done under similar circumstances—that is, withdrawn so much of the batture from public use, made it private property of the city, not dedicated to public use, clearly within terms of the act of 1880, conveying such property to the Board of Liquidation. The titles which the city has made to all these batture lots, outside of Delta street; the recognition of that title by the defendant company, in buying similar lots from the city, before the Company conceived the expedient of getting the squares, in dispute here, under the legislative acts, make it too clear for controversy, that these batture lots, involved in this litigation, are the private property of this city, not dedicated to public use,

subject to the pretensions of the railroad company under its grants; pretensions, it is submitted, to be tried with this Board, not to be maintained by dismissing an appeal, under an agreement, into which the city had no right to enter. To all this is to be added, that the Supreme Court of Louisiana, in an elaborate inquiry into the title of the city to these squares, has adjudged that title in favor of the city, against the defendant company here. See the New Orleans, Mobile and Texas Railroad Company vs. the city of New Orleans, 26th La. Ann., p. 478; Appendix, p. .

The title of the Board of Liquidation, derived from the law of its creation, and the character of the property involved in the litigation, as property of this city, not dedicated to public use, conveyed to the Board, but claimed by the railroad company under its grants, are now before the court. If the nature of the property, whether or not within the class conveyed to the Board, is the test of its right to oppose the dismissal of an appeal, which affects and disposes of that species of property, that test is to be applied, on the basis of fact exhibited.

The grants to the railroad company are contained in the 15th section of the act No. 26 of 1869, and the 5th and 6th sections of the act No. 31 of 1876. A space of 150 feet easterly, i. e., towards the river, from Delta street, from Canal to Poydras, is granted to locate and maintain thereon, the passenger depot and other buildings essential to the business of the company, and for the construction of a freight depot and for other purposes, there is granted

a space of ground of 290 feet, in width from Water street easterly towards the river, and from Girod to Calliope street, with the right to enclose the blocks of ground, parts of streets and levees within the last named limits, with a proviso that the grant shall not embrace the private property of individuals, a reservation the company seems not to have supposed protected from appropriation the private property of the city. See Appendix, pp. 31, 34.

The extent of these grants is shown by the map A, delineating the line of 150 feet from Canal to Poydras streets and that of 290 feet from Girod to Calliope streets. The grants extend in length along the entire front of the city, from Canal street to Poydras, and from Girod to Calliope, (including squares bought by the Company) embracing the length of several blocks of ground, and sweep within their grasp. the squares of city property, laid out for sale by the city, which lie between Girod and Calliope streets, as the court will perceive from the map A.

The grants diverted from the City treasury in one item alone, $57,000 offered by Charles Morgan for one of the squares alone with its riparian and ferry privileges, for which the company here, without prejudice to its alleged rights under the grants, itself, offerred $108,000. App. p.
The grants were those of a Legislature, of an era when legislative favors at the expense of private rights, were not difficult of procurement.

As to the space between Canal to Poydras streets, no streets are projected through it, and hence there is

no divisions of that space into squares. All that batture space from Canal to Poydras streets, is open to the public. See Test. Pilie. Record, pp.
Within that space are no such batture squares withdrawn from public use, as is the case above Girod street. As long as batture is not withdrawn from public use. by the city and thereby made its private property, the Board of Liquidation can make no claim, as its title extends only to city property, not dedicated to public use. The title of the Board to the batture squares above Girod street. because they have been severed from the batture, formed into squares for sale, and thus have long since become city property, not dedicated to public use, is itself suggestive of the different character of the batture between Poydras and Canal, where no such severance has occurred. The grants if they become effective, will have the effect of withdrawing batture between Canal and Poydras, to make it the property of the Railroad corporation, to put its passenger depot upon. The city can withdraw batture, and make it its private property. It does not propose that. With the fact, that the batture below Poydras street, is now in public use, it also appears that if this compromise, making final the judgment appealed from, bocomes effective, the city will have withdrawn batture from the the present public use, and made it the private property of this corporation, to build and maintain thereon a passenger depot for all time to come, better than full ownership for all practical purposes.

The agreement of compromise, and the ordinance that preceded it, are at pages 13 and 15 of the Appendix. On the issue of value of the city property involved in this litigation, along with the $40,000 paid by the Company to dismiss the appeal, is the testimony that the batture alone, from Canal to Poydras street, is worth over one hundred and fifty thousand dollars. Test. Hoey, Rec. p. That part, now in public use, the testimony shows, should ever remain open for the landing of cotton and other produce. Test. Pilie, Rec. p. . It is the legislation of 1869 and 1870, and this $40,000 compromise, that proposes to shut out the public from that space. It is only on the theory that the space could become private property, that the property is valued, and is shown to be, more than four times the $40,000.

As to the value of the batture squares above Girod street, there stands out in impressive contrast with the $40,000—the offers of $57,000 from Morgan, and $108,000 from the Company for one only of the squares, with riparian and ferry privileges. These are, also, the prices paid by this Company, before the legislative appropriation was deemed feasible, for batture squares bought by it in same neighborhood, $40,000, $35,000, and $23,000 for one-half square. See testimony of Williams, the Company's treasurer. Rec., p. ; Bell, p. ; Acts of Sale, pp. . The aggregate value of these batture squares, proposed to be swept from the city under this compromise, is shown largely to exceed one hundred thousand dollars.

This suit in which the appeal is sought to be dismissed,

was decided by the Circuit Court in 1878. It followed decisions of the Supreme Court of the State, upon these grants, which the Railroad Company itself appears to have conceived to be adverse to it, in respect to the grant of these batture squares. The immediate cause of the appealed suit, seems to have been the anticipated demolition of the company's fences and buildings, in the neighborhood of St. Joseph street, that is, its depot on one of the batture squares. The petition, from its frame would seem to look to the right of the Company, to expropriate the batture squares reserved by the decision of the Supreme Court of the State. Ses Appendix, p. of
The judgment dissolved the injunction, sued ~~not~~ to protect the Company in its supposed rights, under the grants, leaving the parties to their rights, under the laws relative to the expropriation of property. But the suit brought by the Company, after the decision of the Supreme Court of the State, however, limited in its scope, developed in the petition, culminated in a sweeping judgment in favor of the Company, forever restraining the city from interfering with the property on the levee and batture, between Canal and Calliope, embracing, of course, all the batture squares, the property of this city. See judgment, Appendix pp. 47 and 48. The expropriation of this property reserved by the Supreme Court in its decision, meant that the company should pay the city for the property. The judgment of the United States Circuit Court in the suit, begun after the decision of the Supreme Court, was far better than

expropriation. That is the judgment that the Railroad Company, wishes to stand. It is the finality of that judgment, to be secured by the dismissal of the appeal, for which the Company pays its $40,000. Its faith in the correctness of the judgment is impressive. The judgment of the United States Circuit Court is based upon the theory that the Supreme Court of the State had adjudged the grants in favor of the Company. There were two decisions of the Supreme Court between these parties. Appendix pp. . The supposed res judicata in favor of this Company will receive some notice further along, if an inspection of the decisions by this Court, is not in itself enough.

When this agreement of compromise transpired, the Board of Liquidation at once took steps to prevent its consummation. See resolution of Board, Record p. 17, 18. The result was this litigation.

ARGUMENT.

It is not unusual for the Legislature, to set apart, certain resources of the Municipal corporations of the State, for the payment of their debts. Nor is it more than the ordinary exercise of Legislative power, to create corporate bodies or other instrumentalities to perform specific functions, appertaining to the proper government of cities, such as the power to hold, possess and apply to the payment of their debts, such property as the Legislative power may have pledged for their payment. In this State, as early as 1850, the Legislature created a Board of Liquidation, to take charge of the assets and property of the city,

sell and apply proceeds to payment of their debts. Acts of 1850, p. 169 ; Sec. 1, 3, 5, 6, 7, 12. Similar legislation, it is presumed, has been of frequent occurrence. The corporation is subject to the Legislative power, in so far as concerns legislation looking to the payment of its debts, and the application of its assets for this purpose. It is vastly different for the Legislature, to take the private property of a political corporation, for no public purpose, but to give it to an individual or a private corporation. To direct that the private property of the city of New Orleans, shall be taken away and given to a railroad corporation, is one proposition. The competency of the Legislature to enact that all property of this city, not in public use, shall be applied to pay the bonded debts of the city, can hardly challenge serious controversy. The cases on the point of Legislative control over the private property of cities and towns are collected in 1st Dillon on Municipal Corporations, p. 150, 155, and cases there collected. But probably, it will pass without discussion, that it is competent for the Legislature to declare that the available assets and property of the city of New Orleans, should be applied to pay its bonded debts. Therefore, the Constitutional provision, that the Legislature of Louisiana at its next session, should enact such legislation, as was necesasary to liquidate the indebtedness of this city, and apply its assets for that purpose, followed by the Legislative act of 1880, creating the Board of Liquidation, dedicating all city property, both real and personal, not devoted to public uses, to the pay-

ment of the bonded debt, and directing that all such property be transferred to, sold and applied by the Board of Liquidation to the retirement of the bonded debt, is to be accepted, as constituting in itself, a complete dedication of that class of property, to the bonded debt of this city. Without more, it would be operative to create the trust, vest in the Board title to the trust property, and conclude the city authorities from the least opposition. The trust is defined, the instrumentality to carry into effect, and the property charged with the trust, stated with precision. As soon as that act became a law, and the Board was organized all property of this city, not in public use, became stamped with the trust and vested in the Board. Nor can it make the slightest difference, that parties then asserted rights to such property, adverse to the city. There was no limitation in the act. "All property belonging to the city, both real and personal," does not admit of qualification. The act then acted on the batture squares above Girod street, laid off for sale years before, if the title of the city to them, had never been divested.

Not the least power of disposition over or with respect to such property was left to the City Administrators. Their single mission, with respect to all such property, that admitted of physical delivery, was to transfer it to this Board. With respect to real estate belonging to the city, covered by the terms of the act, their duty was to let it alone. Least of all, to compromise it away. The act was enough to tranfer such real estate to the Board. To the Board alone was confided the

power to sell and dispose of such property, the proceeds to be carried to the debt fund. See act 5th and 8th sections of act Appendix, pp. . It is true that the Supreme Court of the State, decided soon after, the creation of this Board, with respect to its powers that with regard to one class of assets conveyed to the Board, i, e., franchises to run railroads through the streets, the proceeds only belong to the Board, and the power of sale of such assets remained with the city. This decision, relating to one class of assets, the power to dispose of which, rested with the city, notwithstanding the act, in itself, affirms that which, perhaps, needs no support, i. e , the power of the Board to sell all other property. The Supreme Court held, that police power over the streets of the city, necessarily was to be exerted by the Mayor and Administrators; that the power extended to the terms and conditions on which railroads through the streets should be permitted, and hence, the function of selling franchises for street railroads was to be understood as excepted, in that provision of the act of 1880, which vested in the Board the power to sell all city property, not dedicated to public use. With this reservation, as to the power to sell, the court maintained the title of the Board to the proceeds of the franchise when sold. See Board of Liquidation vs. the city, 32nd Louisiana Annual Report, p. 915. The policy of the act was to give the new body sole control of property pledged to the bonded debt, with power to apply it to the bonded debt. The act admits to the Board the three principal members of the city government. App., p. 2, S. 1.

The present act is careful to make the citizen members of the Boardthe majority. Ibid—It was manifestly not the intention of the act, to give the Mayor and Administrators any power to control the property pledged for the bonded debt, or to dispose of it. That policy finds expression in the plain language "the Board of Liquidation shall be, and is hereby authorized and empowered to dispose of said property, on such terms and conditions as may be deemed favorable." The power is given in terms, both imperative and exclusive of the exertion of the power by those, from whom the purpose of the act, was to take the power, and that purpose is expressed. There is, then, nothing in the decision in 32 Ann. which qualifies the power of this Board with respect to real estate of this city, laid down so explicitly in the act.

Nor can it be maintained, that any act of conveyance from the Mayor and Administrators, was at all necessary to pass to this Board, the real estate of the city covered by the act. The competency of the Legislature to make the dedication, with, or without the Constitutional mandate, which the act fulfilled, was enough. The act itself was completion. Had the city been disposed to offer any obstruction, no court would have tolerated opposition. Hence, those who dealt with the city, with respect to such property, in the face of the act of 1880, can derive not the least advantage from the suggestion that the city authorities never transferred this property by formal notarial act. None was necessary. The act left no such discretion with the city. Real estate is not susceptible of

physical delivery. The act was enough for its transmission. Neither, the trust or title created by the act, is dependant on any such requisite.

But the city of New Orleans promply on the passage of the act of 1880, did all that was necessary to manifest its entire concurrence with the act. The commissioners of the consolidated debt, were previously charged with certain functions connected with the bonded debt. Acts 1852, p. 53, S. 37 ; Acts 1870, p. 38, S. 17. The Mayor and Administrators, on June 16th, 1880, passed an ordinance to carry into effect the act of 1880, directing the commissioners of the consolidated debt to turn over to the Board of Liquidation, all books, papers, accounts and all property in their possession, or under their control, pursuant to the provisions of said act. See Appendix, p. 7. Thus, everything embraced in the act of 1880, admitting of physical delivery, required to be turned over by the city, was turned over to the Board. Nothing more was necessary to be done by the City, to give full effect to the act of 1880. The legislative act and the acquiescence of the city, furnishes the answer to the argument of the other side, that the real estate of this city, not dedicated to public use, did not pass to the Board. It cannot be maintained, that its control remained with the city, in despite of the plain, legislative command, supplemented by the concurrence, as far as concurrence was practicable or required.

And of what conceivable pertinence is the suggestion of the other side, that the scheme of settlement proposed by the act of 1880 failed, that is, the bond creditors of

the city would not take the bonds proposed by that act. The powers of the Board did not thereby fail. Its function, wholly irrespective of whether or not the creditors accepted the bonds, was to apply all property, not dedicated to public use, to pay the bonded debt. The new bonds that failed of acceptance, were to be issued by the city; the Board was to cause them to be prepared. Appendix, p. 3, S. 2. The trust was created with respect, not to these new bonds, but with respect to the old bonds. The Board was authorized and empowered to retire and cancel the entire valid debt of the city (except the floating debt), created up to the passage of the act. Sec. 3. The 8th section, enacts the Board, is to use the surplus of the interest, taxes and the fund arising from the sale of the assets, for the purchase and retirement of any valid bonds heretofore created. There are two functions entirely distinct. The Board is to use the new bonds to cancel old bonds. That failed. The creditors would not take the bonds. The other function remained, to apply all city property conveyed by the act to the retirement of the old bonds. And now is it to be said, that because the new bonds first proposed were not issued, that the act in other respects failed. The plain answer is, that there remained the dedication of all property not devoted to public use, to the retirement of the subsistory bonded debt. There remained the Board of Liquidation, with the well defined function, to take all that property, and with its proceeds pay the bonded debt. The auxiliary provision of the act of 1880, for the issue of the

new bonds fulfilled or not, left in force the independent enactment, the trust in favor of bond creditors with the Board of Liquidation charged with the execution of that trust. Besides, the later act No. 58, of 1882, provided for the issue of another bond entirely acceptable to the creditors, and preserved all the powers and functions of the Board of Liquidation. The act of 1882 was passed to overcome the objection of the bond creditors, to the bond tendered under the act of 1870. Its opening section, is that the city of New Orleans, through the Board of Liquidation, shall be and is hereby authorized to extend the bonded indebtedness of this city. It goes on to provide new bonds for past due bonds and past due coupons, and for the levy of taxes to pay the bonds. Under this act, the objection of the creditors have been overcome, and new bonds accepted. See testimony Oglesby, Record p. ; Wolffe, p. . It may not be inappropriate to state, that under the operation of the two acts, the City of New Orleans, for the first time in years, is paying the interest on its entire bonded debt.

It is thus perceived that since this appeal was taken the legislative power has set apart all the property of this city not in public use to pay its debts, and that the corporate body now before this court, by that legislation, is vested with title to that property, for the purpose of applying it to the bonded debt. The next point of enquiry, would seem to be, does the suit in which the appeal is

sought to be dismissed, involve property subject to that trust and new title created by the Legislature of Louisiana, since the appeal. If so, this discussion, perhaps, need go no further, and that the suit does involve property of that class, it is submitted, is not capable of dispute.

That on the batture between Canal and Poydras streets, the tracks of other companies are laid, and the whole space is now open to the public, does not lessen the plain meaning of the grant or the compromise. The right to build and maintain on that batture, a passenger depot with other buildings for the use of the railroad, is certainly exclusion of all the public uses of this batture. This grant of appropriation to this Company, of a large extent of batture lying in front of the business centre of this city, is clearly conveyed; is affirmed by the judgment, which the $40,000 is to make final, and the compromise itself carefully stipulates for the grants in their entirety. See Appendix, pp. . If the suggestion comes from the other side to mitigate the scope of this compromise, that after all this space is *now* public, it cannot be expected to be overlooked, that the grant and compromise propose that the space shall no longer be public. It is not the most rational theory whether applied to individuals or corporations, that valuable privileges earnestly sought, for which a large pecuniary consideration is given are intended to be relinquished after they are secured, all for the public good. If this Company has been overwhelmed with a desire to abandon this space, notwithstanding the grants, the compromise and the $40,000, the sentiment so far has

found no expression. No relinquishment has been manifested of Record. None will be. Along, then, with any consolatory suggestion that may come from this company, of present public uses, is to be accepted, that those public uses are to cease, if this company can hold on to its grant and compromise. Then again, it is true, the grant of this space to build and maintain thereon, the passenger depot, admits of the refinement that ownership is not formally conveyed, but the grants and compromise quite effectively carry, the right to occupy, use, enjoy and possess the batture property of this city. Nor, could the city easily regain control and remove valuable improvements, erected under a grant, and the judgment made final by the compromise. True, the right of eminent domain would be left to the city, with all its attendant terms and conditions, to regain property it once possessed. Nor does the grant contain any limitation as to time; none implied, except corporate pleasure or corporate life. With these qualifications, if at all appreciable, it results that if this compromise succeeds, 150 feet of batture property of this city from Canal to Poydras street will be permanently withdrawn from public use, and made the private property of this corporation.

The increase of the batture has in the course of years' extended the city several squares beyond the line of the river shore in 1820, the date of the first compromise. See Test. of Pilie, Rec. p. . This accretion has added block after block of city property, which in the past have brought large sums into the city treasury. In 1851,

large amounts were thus derived. So again, at the later dates, when the squares between Delta street and the river were laid out, including those in suit, large amounts were secured for these batture squares. But, if under legislation, which dedicates all property of this city that can be spared for the purpose, to the payment of its debts, until that debt is paid, it is competent for the city authorities to withdraw batture, and barter it away for private purposes, it is clear no batture squares, can hereafter be made available for the bonded debt. The space is public, to which the Board can assert no title. The power of the city authorities over public places is, undoubtedly, to maintain them as public places. The Board is to hold property, which ceases to be public. What the city proposes to do under this compromise, is not to withdraw batture as unnecessary for the public use, to make it the private property of the city, but to make it the private property of this corporation. Can such power on the part of the city be sustained under existing legislation.

But whatever may be said of this space between Canal and Poydras streets, there can be no doubt

with respect to the title of the Board to the city batture squares above Girod street, involved in the suit in which the Board seeks to intervene and assert that title. Directing the attention of the court again to the map A., it will be found that the Company claims under the compromise the lower half of the square, between Julia, St. Joseph, Pilie and New streets. The Company bought the other half of this square from the city. See act of sale of the city to the New Orleans, Mobile and Chattanooga Railroad. Record, pp. . The conveyance is of ten lots. The boundaries of the whole square given in the conveyance are Pilie, St. Joseph, Julia and the batture, as the whole square is laid down on the map, except that the boundary of the square towards the river is stated to be batture instead of New street, probably the name given after the act was passed. See Test, Pilie, Rec., p. . Hutchison, p. . By the title it seems the square extending to the line of the batture, called New street, on the map was laid out as early as 1867. The act declares all the property sold at auction, at which the Company bought, was subdivided into squares and lots, agreeably to plans of the city surveyor dated the 7th December, 1867. This ought to be enough. The Company is estopped by its own title to the one-half, from disputing that the other half of that same square, is and was city property severed from batture, laid off for sale by the city, as early as 1867, and withheld by this Company ever since, under its pretended grants, sought to be affirmed by this $40,000 compromise.

Just below the half sqnare above mentioned are two squares or spaces depicted on the map A., between Julia, Notre Dame. Pilie and New streets, and between Notre Dame, Girod, Pilie and New streets, also claimd by this Company under the compromise. The map depicts the line of 290 feet, the grant to the Company enclosing these squares, and that line coincides with the line of New street. if prolonged. See Test. Hutchinsion. Rec., p. The lowest of these squares it will be seen from the map, is right in front of square 27 A. With 27 A., it would give to any one owning that square, the great value of the river front for the two squares. The portion of this lower half in front of 27 A., furnishes the solution of the $108,000 offered by this Company for 27 A., with riparian rights and ferry privileges. Without this lower square or space in front of 27 A., no such riparian rights would exist, for they belong to the front proprietor. It is in evidence, that the entire space of these two squares between Pilie, the River, Julia and Girod is in public use. But it is within the line of 290 feet conceding with the line of New street, and will become, with the others, the private property of the corporation if the compromise is maintained. The company claims it. It may be, the company would prefer to leave it open to the river, if under the compromise it obtains 27 A, immediately in the rear. But whatever use this company may chance to make of it, the fact remains, that under this compromise those squares or spaces, with the others, become the private property of this corporation "to enclose and

occupy" for the construction of its freight depot and other purposes.

Then comes the valuable square 27 "A," between Girod, Notre Dame, Water and Pilie streets. This square, with the others, between Delta and Water, and between Water and Pilie, were laid out as batture squares in 1866, and directed to be sold as city property as early as 1867. See Map A, and resolution of council 16th December, 1867. Rec., p. . No one has ever questioned that the square was city property, completely severed from batture. One of its boundaries is Water street, laid out in 1858, more than thirty years ago. Morgan offered $57,000 for it to the city. Defendants offered or pretended to offer for it $108,000, along with its riparian privileges, an addition itself, distinguishing it from public batture. So it is, to be assumed in this litigation, no question is to be made, that that square, at the date of the act of 1880, consigning all property of this city, not in public use, to the bonded debt, and to the Board of Liquidation, was, had been for fifteen years before, and is now a batture square of this city, not dedicated to public use, but claimed by this company under contested grants. That square alone, it is submitted, would carry the right of the Board, to intervene in this suit and assert contradictorily with the company, that title which the law fixes in this Board, to that square involved in this litigation.

The defendant company depreciates the value of the property, involved in this controversy. The question is, not of amount. Certainly, there is no plea or denial of

jurisdiction on that score. If the value which witnesses give to the space between Canal and Poydras streets, is not entirely acceptable to defendants, at least, some allowance is to be made for the witnesses, because no one in the City of New Orleans, until this grant and compromise, ever dreamed of that space being subjected to private uses or ownership, If that result is to be contemplated, the testimony, as to value, is entitled to full effect. But how does the case stand with respect to the value of these batture squares? For the two squares, between Calliope, St. Joseph, Water and New streets, just above the first square granted, this company paid the private party, from whom the purchase was made, seventy thousand dollars. Testimony Williams, Record p. . For the half square purchased from the city, twenty-three thousand dollars was paid. Record p. . Is the other half granted, worth less? For the batture square between Water, Pilie, Julia and St. Joseph streets, bought from the city, this company paid twenty-five thousand dollars. Act of sale, Rec. p. . Are not these prices, some indication of the probable value of the squares granted in the same neighborhood? With reference to 27 A., it is said, that the offer for that square embraced riparian and ferry privileges. By this is meant, that the squares or space in front of 27 A., granted to this company, was included in the offer, to carry the privilege so much coveted by Morgan and this company. With that qualification one offer was $57,000 the other $108,000. These figures tell their own story of value, and it is simply idle, for these defend-

ants to attempt to gainsay, what these figures so forcibly express. Nor is it all material, to suggest that batture squares are valuable only to railroads. Others, besides the railroad companies have purchased the batture squares, as the titles of this company show. But with every possible qualification that can be suggested, it stands out upon this Record, that this litigation involves squares of city batture property of very great value, exhibited too conspicuously to need further comment, with reference to square 27 A alone. Excluding all the property, except the batture squares, in controversy, it is moderate to say, there is an actual money value involved of upwards of one hundred thousand dollars. The testimony is far in excess of *$100,000*, and if value was the essential element in this case, the basis for that much larger estimate the Record supplies. See testimony of Hoey, the auctioneer, of perhaps the largest experience in this city.

The title of this Board as a corporate body, competent to stand in judgment and assert its title, can admit of no question. It is a body created with specific functions and powers, with all corporate attributes to hold, possess, sue for and hold property, conveyed to it for the purposes of its creation. The Board belongs to what Chancellor Kent calls quasi corporations, who have corporate capacity for particular purposes, and invested with the power to hold powers, sue and be sued. The Board has been regarded in Louisiana as a corporate body, with the right to sue. Such corporations have often been before this court.

See 2nd, Kent's Commentaries, last edition p. 278, verbo quasi corporations. Angell & Ames, on Corporations, S. 23, 26; 92 U. S., 532; 32d Louisiana An., 915.

There comes from the other side, the suggestion of another difficulty, that the Board has not asserted its control over property involved in this litigation. The Board has had great obstacles to encounter. Until quite recently, it was not easy to carry out any general scheme to apply the property of this city to pay its debts. Execution creditors eagerly followed city property, not protected from seizure by law. The courts of Louisiana were not at all favorable to exemptions from seizure. Even the city water works stock, though declared exempt from execution, was seized on by creditors, and held until this court declared the seizure invalid. See New Orleans vs. Morris, 105th U. S., p. 602. But as it is, the Board has handled and applied large amounts derived from sales of franchises, to the reduction of the bonded debt. See Test. Oglesby, pp. , Wolffe, p. . If the Board has not been enabled to accomplish more, with the city property, conveyed to it to be sold, it was not from any absence of legal title. But is it not enough, that this Board is now here, with its title and with the trust to secure which, that title was created. Even voluntarily inaction or neglect, if either could be imputed to the Board, would not affect its legal capacity to act now, if that capacity exists, and of that it is submitted, there can be no question.

What else is there in this case, if it has been demonstrated that the Board has the title it asserts, that the title extends to all property of this city not subject to public uses, and that the litigation involves property of that class, which the city, without authority, proposes to barter away to this Company for $40,000. It is submitted, the Board is clearly entitled to have maintained the appeal, and to go upon the Record to contest the pretensions of this Company to that property.

It is said by the other side, the city had a right to dismiss its own appeal. Clearly not, if that appeal involves rights, not of the city authorities, but of the other body, the Board of Liquidation. It is said the appeal involved other interests, with which the Board had no concern. If there were, still the city authorities could not assume to deal with the interests, that pertained exclusively to this Board. But what were these other issues? The record is filled with legislative acts and ordinances, relative to this Railroad Company, and its right to tracks. If there is a line in any one of these numerous acts and ordinances, other than the acts of 1869 and 1870 and the compromise ordinance of 1882, App. pp. , that touches the subject here, or that enlarges the issue in litigation, beyond that which relates to the batture property, it has escaped attention. The suit in which the appeal is sought to be dismissed, was brought after the Supreme Court of the State, had adjudged finally, and forever, the right of the Company, to keep its tracks above and below Canal street. There is now no earthly

issue on that question, anywhere, or with anybody. The issue which this Board makes is as to the batture covered by these grants of 1869 and 1870. With nothing else. That only was the issue made by defendants in their petition. App., p.

Perhaps, it is entirely sufficient for the purposes of that case, to show the title of the Board to property of that class involved in this litigation, without going now, into the question of the correctness of the judgment of the United States Circuit Court, the subject of the compromise. That judgment affirms that the title to this property, had become *res adjudicata* in favor of the Company. The *res adjudicata* is claimed to be found in the decisions of the Supreme Court of the State. There were two judgments of the State Supreme Court, between these parties. The judgment of the U. S. Circuit Court and the judgments of the Supreme Court are on pp. of the Appendix. It is apprehended, it will be quite difficult to appreciate how this *res adjudicata* is evolved.

This Company brought two suits against the City, to assert the validity of these grants. Why two suits should have been brought, is not apparent. The Supreme Court of the State in developing the issues, seems to have conceived that one of the *suits* involved the batture property as well as the right to lay the tracks, and the other, the batture property only. But so far as the grants were concerned, their validity was then, 1874, to be tried against the city, and in both suits the city was necessarily a defendant.

In the suit in which the *res adjudicata* is claimed to exist, the court states the controversy to arise, out of the acts of 1869 and 1870, granting to the Company the batture property, and also the right to lay tracks down the levee, and occupy as a railroad, a strip on Elysian Fields, a street far away from this batture. This case is elaborately decided. The first judgment was against the Company, in all respects. Its reasoning is devoted to the levee below Canal street, and to the strip on Elysian Fields, with which the batture in question here has nothing to do. In Judge Howell's concuring opinion, he alludes to the squares, as beyond the legislative power to grant. The conclusion is reached by the majority, that the Legislature had no right to make the grants. The injunction sued out by the Company, to prohibit the city from interferring with the rights granted, is dissolved, and that plaintiff, i. e., the Company be inhibited from occupying the property in controversy. All that the petition asked in the case was an injunction to protect the tracks. Appendix, p. . Chief Justice Ludeling dissents. There was a rehearing in the case. The decree prohibiting the railroad from laying or preserving its tracks on the levee, i. e., open space in public use was modidfied. On that rehearing the court plainly manifests that the intention is, only to modify the decree, in so far as it prohibits the laying of the tracks. The opinion on the rehearing is short and is here transcribed.

New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, No. 3692.

Appeal from the Eighth District Court for the Parish of Orleans.

Mr. Justice Morgan :

The sole question presented in this case is, has the State the power to grant a railroad company the right of way through a street in this city ? A thorough examination of this question, has led us to the conclusion it has.

It is therefore ordered, adjudged and decreed that the judgment heretofore rendered by us be avoided, annulled and set aside. and it is now ordered, adjudged and decreed that the judgment of the District Court be affirmed with costs.

But in framing the decree after this reasoning, restricting the issue to be solely " has the State power to grant a right of way through a street, the court from sheer inadvertence directed the judgment appealed from to be affirmed." See Appendix. p. . The judgment thus affirmed went for beyond the " sole issue " which the Supreme Court developed as that to be decided. That judgment of the lower court is at p. of the appendix. That is the judgment held up here as *res judicata*.

But at the same time, by the same court, between the same parties, a decision was rendered in the other case. In that case, involving, as appears from the statement in the opinion of the Supreme Court, the issue only of the validity of the grant of these batture lands, the opinion is against the Company, on the grants and in favor of the City, reversing the judment of the lower court in favor of the Company,

and inhibiting the plaintiff from occupying the property, i. e., the batture squares in controversy. Appendix, p. . On this original opinion a rehearing was given just as it was in the other case, for the rehearing in one necessarily involved a rehearing in the other, and on that rehearing the same conclusion was reached as in the original opinion, with one modification. In the opinion the nature of the title of the city, to the batture squares is elaborately examined under the compromise of 1851. The whole jurisprudence on this batture question is presented, and the conclusion is reached that the city owned these batture squares, precisely as a private proprietor, and that the Legislature cannot take such property and confer it on a corporation or on any one. Portions of the opinion, and the whole of it sustains the same view, are here transcribed.

First, the issues are stated thus:

"The plaintiff company enjoined the city of New Orleans " from leasing or selling, and from interfering with plaintiffs " in occupying and enjoying, holding and acquiring certain " lands granted to the plaintiffs by and described in the fol- " lowing clause of Section 15, of Act No. 260, 1869, to-wit, " describing the batture property:

* * * * * * *

" The question presented and discussed by both parties " is the right of the State to make the said grant, the " city claiming to be the owner of said grant subject " only to a servitude in favor of the public as long it may " be needed for public purposes, and the State asserting ab- " solute ownership and control of the land as public places.

The Court then proceeds to examine the title of the city to the batture squares:

"If they be "public places," in the ordinary legal signifi-"cation of these words, it may be that the State has the "control asserted. We will here inquire into the rights "of the city as to the lands.

"In 1820, the batture and that portion of the city was "owned or claimed by the heirs and assigns of one Ber-"trand Gravier as riparian proprietor, and there being "some difficulty with the city as to the ownership and "use thereof, the parties entered into a compromise by "notarial act in September of that year, by which it was "stipulated that all lots of ground outside of a certain "line should remain inalienable and be used for no other "public purposes than those for which they are naturally "designated.

"When in 1836 the city was divided into municipali-"ties, it was provided that no disposition should ever be "be made of the said batture in violation of said compro-"mise, and that the Second Municipality, in which it was "situated, should not obstruct the inhabitants of any part "of the city in the free use thereof.

"By the continued accessions this space of ground be-"came inconvenient for public use, and in 1850 the Leg-"islature repealed that portion of the act of 1836 pro-"hibiting any disposition thereof, authorized and directed "the Second Municipality to lay off two additional streets "according to a certain plan, declared that the balance of "the batture should be left open, and so kept for the ac-

" commodation of the public and the convenience of com-
" merce, and that in the event of the agreement of the
" original parties to the said compromise for the sale of
" the said batture, it should be the duty of the Second
" Municipality to lay off in lots all not needed for streets
" and public purposes as above, and dispose thereof on
" terms to be agreed on; provided one-third of the pro-
" ceeds should be appropriated to the general sinking fund
" of the city.

" In pursuance of this act the said parties, with the Sec-
" ond Municipality, which was represented by a commit-
" tee, agreed by notarial act on 20th of June, 1851, to
" change the destination made in the compromise of Sep-
" tember, 1820; that three streets should be laid out, cer-
" tain squares divided into lots and sold at auction within
" different periods of time and on specified terms, which
" sale should be binding on the parties then contracting
" with the Second Municipality as vendors; that the pro-
" ceeds be divided into three parts, one to be paid to the
" said original parties, one to the general sinking fund of
" the city, the other into the treasury of the Second Mu-
" nicipality; that three specific squares be reserved for
" market-houses, and that portion not divided into lots
" for sale should be, in the language of the act, " vested
" in perpetuity and full ownership in said Municipality
" No. 2," in favor of whom the said parties then contract-
" ing therewith ceded and relinquished forever all the
" claims in and to the said batture, as well as all and
" every enlargement thereof, or accretion thereto, by new
" formation.

"It is by this act, it is contended, the city, which has "succeeded to the rights of the Second Municipality, ac- "quired the title to and full ownership of the ground now "in controversy."

And the conclusion is announced thus:

"The title, it would seem, was thereby vested in the city, so far as the original owners as parties to the act could confer it, and the property is under the exclusive control of the city, as owner, for the benefit of the inhabitants."

* * * * * * *

The court having determined that the title to the batture vested in the city, and is under its exclusive control for the benefit of its inhabitants, next examines the asserted power of the Legislature to confer it in the corporation. It arrays the authorities to support the proposition that the property of a city, held in its private or proprietary character, is quite as securely placed under the constitutional protection of private rights, as if held by a citizen, and that the Legislature cannot dispose of the property to the Railroad Company. The court cites Dillon on Municipal Corporations, Cooley on Constitutional Limitations, Judge Story, in 9th Cranch., p. 336, Chancellor Kent, Mr. Justice Field in 18th Cal., 490, and numerous other authorities. See App., p.

Continuing, the Court holds, p. 37:

"If, then, a municipal corporation can acquire the fee- "simple of property, we think the squares intended for the "depots of the plaintiffs were so acquired, and this cannot "be taken by the Legislature while the city corporation ex- "ists.

Finally, the court decides, p. 39:

In our opinion, the injunction improperly issued in this case. But as the city has made no claim against the plaintiffs, our former decree was erroneous in granting a demand in reconvention and inhibiting the plaintiff's from occupying the property in controversy. Under the pleadings all we can do is to render judgment in favor of the city, dissolving the injunction and dismissing plaintiff's suit, leaving the parties to their rights under the laws relative to the expropriation of property.

It is therefore ordered that our former decree be set aside, and it is now ordered that the judgment appealed from be reversed, and that there be judgment in favor of the defendant, the city of New Orleans, dissolving the injunction herein and dismissing plaintiff's suit, with costs, in both courts, *without prejudice to the rights of the parties under the laws of expropriation.*

Now it is quite true that there was no reconventional demand in the case, and the court modified its former opinions so far as it inhibited the plaintiff, i. e., the Company, from occupying the property. But that does not lessen the effect, of the thing adjudged in the case. The Company sued out the injunction to prevent the city from disturbing its occupancy and enjoyment of the batture squares. App. p. . The court dissolved the injunction in an elaborate decision on the grants, holding that they had not the least validity to divest the title of the City. That was enough. It decides the issue of title, involved in the suit against this company. Without a re-

conventional demand the issue was presented regularly, and decided. Under the law "It matters not in what form, whether by petition, exception or intervention, the question is presented, whenever the same question arises between the same parties, the exceptions of *res judicata* estops." Plicque vs. Perret, 19th Louisiana Reports, p. 318. The court could not have well have gone further than to dissolve the injunction, and prohibited the Company from disturbing the city, for the company was actually in possession. The court dissolved the company's injunction, and left the company to their right of expropriation. Not only is the decision against the company in terms, but the reservation in itself, shows that there was nothing left for the company but to expropriate the property. It is plain, too, *that* was the appreciation of the company, when it brought the instant suit. See petition, App. p.
It was after that, the discovery was made that the Supreme Court of the State, had adjudged these grants in favor of the Company.

Thus, there are two decisions of the Supreme Court of the State, between these parties. One intends to adjudge only, the right to lay tracks in the streets of the city, as explicitly stated in the opinion, which precedes the decree, but the decree, inadvertently framed, maintains the judgment of the lower court, which goes further. That decree is set up here, against, and in face of another opinion and decree of the same Supreme Court, between the same parties, rendered at the same time, which distinctly decides the company do not acquire these batture squares, under the

grants, reverses and annuls the judgment of the lower court, which maintain the injunction, and the Supreme Court concludes by dissolving that injunction, sued out to maintain its company in possession of these batture squares under the grant. This decree, instead of *res judicata* in favor of the Company, left the company nothing but its right of expropriation. The reasoning of both decisions, is all against the company, as to the grant of the batture squares. The decrees, taken together as they should be construed, decide in favor of the company as to the tracks, but distinctly against the company and in favor of the city, as to the batture squares. It is not necessary in this case, to state the general principle that *res judicata* which precludes the examination of a case on the merits, is strictly construed, and in cases of doubt will be determined against him who urges it. 3d Louisiana Ann., p. 530; 18th Louisiana ports, p. 212; 5th Louisiana Ann., p. 104. This, it is submitted, is *not* a case of doubt. On any rational interpretation of these decisions of the Supreme Court, the *res judicata* is in favor of the city and of this Board, as to the title to these batture squares. The decision of the United States Circuit Court, in favor of this Company, sought to be made final by the compromise, is based exclusively upon the *res judicata*, which the Court evolves from the decision of the Supreme Court.

Nor with regard to the utter absence of the right of the Legislature to give away the City property, held by the title of private proprietorship is there, it is submitted, any room for controversy and no discussion is needed. The denial of any [illegible] power is expressed in the cases

such

cited by the Supreme Court of this State, on which it basis its own opinion and decree. This limitation, on the legislative power. is found in Story on the Cons., sec. 1393; 1st Dillon, sec. 39. Mr. Justice Field, in 18th California, p. 590, cited not from our examination, but as found in Dillon; Judge Story in 4th Wheaton, 694; 26 La. An., 479.

The compromise of 1851, gave to the city the batture in full ownership. Whether a donation or compromise, it was a title. The Supreme Court of the State in its decision, that the title thus conveyed, was that of proprietorship, precisely as if the city had bought the batture, announces nothing that can be successfully controverted. There is nothing in the cases cited on the other side, that can affect the conclusion of the State Court on this point. In Parish vs. Second Municipality, 8th Ann., 145, a property owner claiming to have succeeded to the rights of the riparian proprietors of 1820, undertook to prevent the city from withdrawing and selling the batture in front of New Levee street, which, under the compromise of 1820, was stipulated ever to remaln open. The attempt failed. The Court maintained the right of the City to withdraw the batture from public use and make it private property. With still greater reason did the Supreme Court in 1874, decide, that by the withdrawal of the batture squares involved here, i. e., between Delta and the river, those squares became the private property of the City, for, under the compromise of 1851, unlike that of 1820, that batture was forever abandoned to the City, and full title vested in the

City by the front proprietor. Nor is there any decision of the Louisiana Courts upon the nature of the title derived by the City under the compromise of 1851, that conflicts with the decision in 26th Ann. Other decisions on this batture question, made prior to the compromise of 1851, serve no useful purpose. Least of all, can this Company, which has recognized the title of the city, to these batture lots, by buying some of them, be permitted to question, that the title of the city is that of private proprietorship—clear enough without that recognition. So, if the batture squares involved in the controversy are the property of this city, held in its proprietary character as owner, and the principle is conceded that there is no legislative power to take the private property of this city, to give it to this corporation, there is an end of the controversy in the suit, sought to be compromised, without recurring to the *res judicata*, itself enough to determine the contention against this Company.

On the issue of Legislative power over the property of corporations, the defendant refers to Ellerman vs. the New Orleans, Mobile and Texas Railroad Company, 105th U. S. p. 166. But that decision merely affirms the power of the Legislature, to confer on the corporation the right to enclose, occupy and use as a wharf, "margins of navigable rivers reserved for public uses" or portions of the levee, batture or wharf." Here the very different issue is, the competency of the Legislature to dispose of squares of ground set apart as private property of this city. Nor does 27th Annual, p. 414, deal with any question, save the Legislative power over such public places.

The other side suppose that the title and functions of the Board, are changed by the 7th section, new city charter of 1882. That section enumerates among the powers of the city government, that of "laying off and selling, in lots or squares, so much of the batture from time to time as may not be required for public purposes." But the Board is a part of the city government, the charter did not displace it, as that instrumentality by which were to be performed the functions assigned to it, with reference to all property not in public use. The same Legislature that passed the new charter, placed the new bonds to be issued in the hands of the Board as clothed with the functions created by previous legislation. See Act No. 58, of 1882, Appendix p. 11. Besides, what application has that provision in the charter, to batture squares already laid off years before, and passsed to the Board by the act of 1880.

Again, the other side brings to the notice of this court, Act No. 81, of 1882, which provides, that hereafter whenever the city shall sell or lease public privileges, such as the right of way for street railroads, or other undertakings within her power or control, the price shall be applied to public improvements. The application of this statute, is not apparent to the issue, whether the Board is vested with title to city batture squares under the act which dedicates to the bonded debt, all city property not devoted to public use, and creates the Board to hold and sell said property.

It remains to notice the number of ordinances of the Council, brought into the record by the other side, to

show privileges on the batture granted by the council. They have been frequent, generally to steamships and other vessels to use wharves, parts of levee, in some instances to railroads, to use parts of the levee, or to put depots on streets. Perhaps, they may have gone further in their grants. But of what pertinence are all these ordinances? If it could even be shown that the city had trenched on property within the class conveyed to the Board, would it affect the legal question of the rights and powers of this Board? Would it tend to validiate the appropriation of these batture squares by this Company? One thing is believed to be certain, that neither the acts of the Council for all time, or the experience of any inhabitant of this city, can supply a precedent or parallel to the grant made to this Company by the Legislatnres of 1869 and 1870, stipulated to be affirmed by this compromise.

It is respectfully submitted that the judgment of the lower court should be reversed, the compromise of date the October, 1882, between the Mayor and Administrators of the city of New Orleans, be annulled and set aside; that the motion to dismiss the appeal in the suit of the City of New Orleans vs. The New Orleans, Mobile and Texas Railroad Company, No. of the docket of this Court be refused, and that the Board of Liquidation be admitted to the record to prosecute that appeal in the place of the City.

HENRY C. MILLER,
Solicitor for Complainant.

APPENDIX.

Extract from

ACT No. 31, OF THE LEGISLATURE OF LOUISIANA, OF 1876,

Sess. Acts p. 54, containing the dedication of all property of the city, not dedicated to public use, to bonded or floating debt, dedicate by the latter Act of 1880, made absolute in favor of the bonded debt.

SEC. 10. *Be it further enacted, etc.*, That no city property of any kind, shall hereafter be sold or conveyed in any manner, except the proceeds be applied to the reduction of the bonded or floating debt.

Extract from

ARTICLE 254 OF THE STATE CONSTITUTION.

"The General Assembly shall, at its next session, after the adoption of this Constitution, enact such legislation as may be proper to liquidate the indebtedness of this city, and apply its assets to the satisfaction thereof." * * *

Extract from

ACT No. 133, TO LIQUIDATE THE INDEBTEDNESS OF THE CITY OF NEW ORLEANS,

and to apply its assets to the satisfaction thereof; to create a Board of Liquidation and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.)

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana,* That for the purpose of liquidating, reducing and consolidating the debt of the city of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said city is hereby created. The said syndicate shall be chosen as follows: Two by the Governor of the State of Louisiana, two by the Lieutenant-Governor, and two by the Speaker of the House of Representatives, and the Mayor of the city of New Orleans, the Treasurer and the Controller thereof, as hereinafter provided, shall be *ex-officio* members of said syndicate; *provided,* that in case no change is made in the present city government, the present commissioners of the consolidated debt shall act as *ex-officio* members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number from death, resignation or otherwise.

SEC. 2. *Be it further enacted, etc.,* That the commissioners of the consolidated debt, or the city officers provided and named in section one of this act, and the *syndicate hereby created, shall* constitute a Board of Liquidation of the city debt, and the *said board shall have exclusive control and direction of all matters relating to the bonded debt of the city*

of New Orleans. The Board of Liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as hereafter provided. The said bonds shall be signed by the Mayor and countersigned by the Administrators of Accounts and of Finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four per cent. per annum, from the date of said bonds, payable semi-annually, on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the Board of Liquidation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payable, interest and principal, in lawful money of the United States; and the said board of liquidation shall be and is hereby empowered and authorized to establish in New York, London, Paris and Amsterdam such agencies as they may see fit and desirable.

SEC. 3. *Be it further enacted, etc.*, That the Board of Liquidation of the city debt be and it is hereby authorized and empowered to retire and cancel the entire valid debt of the city of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance

of proceeds to the purchase of such old obligations, or by exchange of the new bonds against said old obligations, on such terms as may be agreed upon between the holders of the said old obligations and the Board of Liquidation; *provided*, the new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar: and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligation with interest accrued thereon; *and provided further*, that the entire issue of new bonds sold or exchanged, as above provided, shall not exceed in all ten millions of dollars.

SEC. 4. Unimportant—refers to fraudulent bonds, and provides they shall not be funded, unless ordered by judge.

SEC. 5. *Be it further enacted, etc., That it shall be the duty of the city authorities*, as soon as possible after the organization of the Board of Liquidation of the city debt, to turn over and transfer to the said board all the property of the city of New Orleans, both real and personal, not dedicated to public use, and the Board of Liquidation shall be and is hereby empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agent of the board, at credit of "city debt fund."

SEC. 6. *Be it further enacted, etc.*, That nothing in this act shall be construed as affecting or in any manner impairing the act 31, of 1876, commonly known as the "Premium Bond Act." but it will be the duty of the city authorities to turn over and transfer to the Board of Liquidation

of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium bond act, and it shall be the duty of the Board of Liquidation to apportion the proceeds of said tax, and apply the same pro rata, and in the proportion which each form of bonded debt shall bear to the entire amount of the city debt; and such portions of the said proceeds of the tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest of the bonds created under this act.

SEC. 7. Unimportant. Makes it felony for a board of liquidation to misappropriate funds of the Board.

* * * * * *

SEC. 8. *Be it further enacted, etc.*, That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the Board of Liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the city of New Orleans heretofore created, at the rate not exceeding fifty cents per dollar, or, at the discretion of the Board, for the retirement of the bonds created under this act at a price not exceeding par; and the bonds or obligations purchased, exchanged or retired shall be canceled and destroyed by the said Board of Liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence of such witnesses as may desire to attend. A *proces verbal* of the same, giving the amounts, numbers, dates and other particulars, for identi-

fication of the obligations destroyed, shall be made out and sworn to by a majority of the Board of Liquidation, and published within ten days of such destruction in the official journal of the city of New Orleans.

SEC. 9. Unimportant—provides for registry of bonds and for issue of certificates, and why holder prefers it.

SEC. 10. Unimportant—provides for office and office expenses of Board.

SEC. 11. *Be it further enacted, etc.*, That the City Council be and is hereby required to levy an annual tax, calculated upon the assessment of the preceding year, less twenty per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of this act, and any tax levied shall continue in force until superceded by a new levy for the same purposes.

SEC. 12. Repealing all laws in conflict.

CITY ORDINANCES—OFFICIAL.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *June* 16, 1880.

[No. 6532—Administration Series.]

AN ORDINANCE to carry into effect act No. 133 of the General Assembly, approved April 10, 1880.

Whereas the Board of Liquidation of the City Debt, created by said act of the General Assembly, approved April 10, 1880, have been duly organized, and are prepared to undertake the trust given them; therefore

SECTION 1. Be it ordained by the Mayor and Adminis-

trators of the city of New Orleans, in council convened, That the Commissioners of the Consolidated Debt of the city of New Orleans be, and are hereby, directed to turn over and transfer to the Board of Liquidation, created by said act No. 133, all books, papers, accounts, deposits, bonds, credits, and all property under their control or in their possession, pursuant to the provisions of said act; and said commissioners shall require of the said Board of Liquidation a detailed receipt of all things so turned over and transferred.

SEC. 2. Be it further ordained, That the Administrator of Finance be, and is hereby, authorized and directed to deposit to the credit of the said Board of Liquidation of the City Debt, and in such bank as shall be selected by them, all taxes appropriated and collected for the interest of the bonded debt of the city of New Orleans; *provided*, that the said Board of Liquidation shall carry out the engagements now existing between the Louisiana National Bank, the Commissioners of the Consolidated Debt and the city of New Orleans.

SEC. 3. Be it further ordained, That all ordinances and parts of ordinances in conflict or inconsistent with the provisions of this ordinance be, and the same are hereby, repealed.

Adopted by the Council of the city of New Orleans, June 16, 1880.

Yeas—Chevalley, Collins, Glynn, Isaacson.

I. W. PATTON, *Mayor*.

A true copy:

ROBT. C. WOOD, *Secretary*.

Extract from

ACT No. 74, TO AUTHORIZE THE CITY OF NEW ORLEANS

to fund its floating debt; to provide for the issuance of bonds therefor; to make such bonds receivable for certain back taxes and for the purchase price of property sold for certain back taxes or otherwise; to provide for the interest on such bonds and for their ultimate payment:

Whereas, it is provided in article 254 of Constitution, that the General Assembly, at its next session after the adoption of this Constitution, shall enact such legislation as may be proper to liquidate the indebtedness of the city of New Orleans, and apply its assets to the satisfaction thereof; and

Whereas, the creditors of the said city whose claims are unbonded, although audited and acknowledged, are without any transferable certificates of such indebtedness, and are thereby placed at an unfair advantage; and

Whereas, the recent Constitutional Convention authorized the funding of the floating indebtedness of the State into three per cent bonds, receivable for back taxes and licenses, thus indicating a wise and equitable plan for the liquidation of such indebtedness:

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the municipal government of the city of New Orleans be and is hereby authorized and empowered to issue, from time to time, as they may be required, bonds of the denomination of five dollars ($5), having ten years to run, from the first day of July, 1880,

bearing interest at the rate of three (3) per cent. per annum, payable at the City Hall, in New Orleans, and with semi-annual coupons attached.

SEC. 2. *Be it further enacted, etc.*, That the said series of bonds shall not be issued in excess of the amount of the valid floating indebtedness of the city, including school time certificates or orders outstanding January 1, 1880, and shall only be issued, used or exchanged as provided in this act.

SEC. 3. *Be it further enacted, etc.*, That the said bonds may be issued to take up the unbonded valid indebtedness of the said city of New Orleans and the unpaid salaries of school teachers and expenses of maintaining the public schools created since 1872 and prior to January 1, 1880; *provided*, that no past due interest coupons or judgment debts against said city of New Orleans shall be funded into said bonds; *and provided further*, that Metropolitan Police warrants or certificates issued in excess of the *quota* of said city of New Orleans shall not be convertible into said bonds.

SEC. 4. *Be it further enacted, etc.*, That the municipal government of the city of New Orleans shall provide, by municipal ordinance, for the exchange of the said bonds for such floating indebtedness as mentioned in this act.

SEC. 5. *Be it further enacted, etc.*, That all moneys received into the treasury of said city of New Orleans for taxes and licenses due the said city prior to the first day of January, 1879, shall be and are hereby set aside and shall constitute a special fund for the payment of the interest on siad

bonds authorized in this act, and to provide a sinking fund to redeem the same at maturity. All money received by the said city for unpaid taxes and licenses for the year 1879 shall go to the said fund for the payment of the interest on said bonds, and to provide a sinking fund for their redemption; and the proceeds of such taxes and licenses for the year 1879 shall not be used or expended for any other purpose than as herein specified; *provided*, that if there shall be any unpaid floating indebtedness for the year 1879, such floating indebtedness may be paid out of the money derived from the taxes and licenses for that year.

SEC. 6. *Be it further enacted, etc.*, That the bonds herein and hereby authorized to be issued, together with the interest coupons to said bonds attached, shall also be receivable for all taxes and licenses due said city prior to the first day of January, 1879. The said bonds and interest coupons shall also be receivable in payment for the purchase price of any property which may be sold by the city for taxes or licenses due prior to January 1, 1879, or which may be otherwise sold, except for taxes and licenses exigible subsequent to January 1, 1879.

SEC. 7. *Be it further enacted, etc.*, That the sinking fund provided herein for the redemption of any balance of said bonds which may be outstanding at maturity shall be established and regulated in detail by ordinance of the city government of the city of ew Orleans; the said city may further provide for receipts to the said sinking fund, and should the collections of the unpaid taxes and licenses for

the year 1879 be insufficient to meet the interest on said bonds, the said city shall otherwise make up the deficit; *provided*, that nothing in this act shall be construed to authorize any interference with the premium bond scheme, as heretofore authorized and ratified by the General Assembly.

SEC. 8. *Be it further enacted, etc.*, That all laws or parts of laws in conflict with this act be and the same are hereby repealed.

Extract of Act No. 58 of 1882:

Entitled an act to authorize the city of New Orleans to renew and extend payment of her outstanding bonds, other than Premium Bonds, to provide the rate of interest on the bonds as renewed or extended, and authorize the levy of a tax to pay the same,

Whereas, under article 48 of the Constitution, notice of intention to apply for the passage of this act has been duly published in the city of New Orleans, for thirty days, as required, and

Whereas, the present financial embarrassment of the city of New Orleans threatens further to depreciate the value of property, to increase the sum of its indebtedness, and to impair good government of its affairs, and whereas, litigation has hitherto resulted disastrously for the taxpayer, and whereas, the public creditors of said city of New Orleans, have indicated a desire to settle their claims equitably, and to postpone the payment of certain bonds in order to lighten the burden of taxation, and whereas, the Constitution contemplates a definite termina-

tion of the corporation's embarrassment by special legislative enactment:

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, that the city of New Orleans, acting through the Board of Liquidation of the city debt, or other duly authorized officers, be and she is hereby authorized and empowered to extend the bonded indebtedness of said city, other than Premium Bonds, outstanding at the passage and promulgation of this act, for the period of forty years, from January 1, 1883, at a rate of interest not exceeding six per cent.; *provided*, the city shall have the right to call in said bonds, so renewed or extended for payment at par after the year 1895, upon giving notice to that effect during a period of three months.

SEC. 2. *Be it further enacted, etc.*, That the provisions of the foregoing section be and they are hereby extended to all bonded obligations of the city, except Premium Bonds, whether due or to become due, including such as may have been merged into judgments, but for which no tax, special or otherwise, has yet been levied; *provided* nothing in this act shall be considered as a waiver of prescription which may have accrued or may accrue on such bonds in favor of the city.

SEC. 3. Provides for issue of forty year bonds for extend bonds.

SEC. 4. Provides for issue of ten year bonds for matured coupons.

SEC. 5. Provides for tax to pay bonds.

SECTIONS 6, 7.

SEC. 8. Provides for annual accounts of operations of Board.

SEC. 9. Provides for passage by city of all ordinances requisite to carry act into effect.

SEC. 10. Makes the act a contract.

SECTIONS 11, 12, 13. Penalties for embezzlement of the funds and assets of board—provides for preference, treats of all suits involving execution of act, and repeals all inconsistent laws.

Mayoralty of New Orleans,
City Hall, October 11, 1882.

No. 8079—Administration series.

Whereas, propositions have been made for the compromise and settlement of the suit and the matters involved therein, known as the City of New Orleans vs. The New Orleans, Mobile and Texas Railroad Company, now pending in the Supreme Court of the United States, on an appeal taken by the City of New Orleans from the judgment of the Circuit Court of the United States for the District of Louisiana, rendered on the 11th of June, 1878, affirming and declaring as *res adjudicata* the judgment rendered by the Eighth District Court for the Parish of Orleans, on the 15th day of December, 1871, which judgment was affirmed by the Supreme Court of the State of Louisiana, No. 3692, in favor of said New Orleans, Mobile and Texas Railroad Company and against the City of New Orleans, affirming the Constitutionality of the several acts of the Legislature of Louisiana of 1868, 1869 and 1870, relative to said railroad company, and the grants, rights

and privileges made to said company. And to grant and confirm the New Orleans, Mobile and Texas Railroad Company as re-organized, and the Louisville and Nashville Railroad Company in the grants, rights, occupancy and privileges heretofore made by the city and granted and confirmed by the State of Louisiana to the New Orleans, Mobile and Chattanooga Railroad Company, and the New Orleans, Mobile and Texas Railroad Company, in and by the several acts of the Legislature, No. 28 of 1868, Nos. 26 and 67 of 1869, and No. 31 of 1870.

Be it resolved, That the Mayor of the City of New Orleans, is hereby authorized and directed to accept the proposition made, and to compromise and settle with the New Orleans, Mobile and Texas Railroad Company, as re-organized, and the Louisville and Nashville Railroad Company recognized as successor, and entitled to the rights, grants and privileges heretofore made to the New Orleans, Mobile and Chattanooga Railroad Company, and the New Orleans, Mobile and Texas Railroad Company and the matters in controversy, and the suit of the City of New Orleans vs. the New Orleans, Mobile and Texas Railroad Company, dismissing said appeal, acquiescing in the judgments rendered in favor of said railroad company, and confirming to the New Orleans, Mobile and Texas Railroad Company the rights, grants and privileges heretofore granted by the city of New Orleans and by the State of Louisiana, as set forth in the preamble heretofore, and in consideration of forty thousand dollars, and the Mayor is authorized to receive the same and to sign any and all

agreements and contracts necessary or proper to carry out this ordinance, and the compromise and settlement above mentioned and to have the appeal taken herein by the city of New Orleans dismissed, and acquiesce in the judgments rendered in favor of the railroad company, as a final settlement of the same.

Adopted by the Council of the City of New Orleans, October 11th, 1882.

JOSEPH A. SHAKESPEARE, Mayor.

ACT OF COMPROMISE.

Be it known, that on this eleventh day of October in the year of our Lord one thousand eight hundred and eighty-two, before me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned.

Personally came and appeared the Honorable Joseph A. Shakspeare, mayor of the city of New Orleans, herein acting in such capacity under and by virtue of the authority in him vested by ordinance No. 8079, administration series, adopted by the Council of the city of New Orleans at a meeting held on this eleventh day of October, A. D. 1882, a duly certified copy of which is annexed to this act and incorporated as part hereof.

Who declared that he acknowledges to have received from Thos. L. Bayne, Esq., attorney for the Louisville and Nashville Railroad Company, and for it and the New Or-

leans, Mobile and Texas Railroad Company, re-organized, the sum of forty thousand dollars; and for and in consideration of said sum, the city of New Orleans does, by these presents compromise and settle all matters in controversy and the suit of the City of New Orleans versus the New Orleans, Mobile and Texas Railroad Company, now pending in the Supreme Court of the United States, on appeal by the City of New Orleans from the judgment of the Circuit Court of the United States, rendered on the eleventh day of June, 1878, affirming the judgment of the Supreme Court of Louisiana and of the Eighth District Court of the Parish of Orleans, in favor of said railroad company, dismissing the appeal, acquiescing in the judgments rendered in favor of said company, and confirming and securing to the New Orleans, Mobile and Texas Railroad Company, re-organized, and the Louisville and Nashville Railroad Company, the rights, grants, occupancy and privileges heretofore granted by the City of New Orleans, and grants made and confirmation of the same by the State of Louisiana by acts of the Legislature, No. 28 of 1868, Nos. 26 and 67 of 1869, and No. 31 of 1870, all as set forth in the propositions recited in the preamble to the above mentioned and annexed ordinance No. 8079 A. S., and in said ordinance hereby making full compromise and settlement and granting and confirming all the rights and privileges therein described.

And also personally came and appeared herein, the said Thomas L. Bayne, attorney of and for said railroad com-

pany, and in the name and on behalf of said companies, accepts the same.

Thus done and passed at the City of New Orleans, in the presence of E. L. Bower and A. E. McConnell, competent witnesses residing in said city, who hereunto subscribe their names, together with the said appearers, and me, notary, the day, month and year first above written.

Original signed :

JOS. A. SHAKSPEARE, Mayor.

NEW ORLEANS, November 9th, 1882.

Extract from the minutes of Board of Liquidation of a meeting held Ooctober 13th 1882 :

"Mr. Gomilla moved that the $40,000 now in the hands of the Administrator of Finance be enjoined, and that the attorney be directed to institute legal proceedings at once."

Adopted.

A true copy :

T. WOLFE, Jr.,
Secretary.

NEW ORLEANS, November 9th, 1882.

Extract from the minutes of Board of Liquidation of a meeting held October 17th, 1882 :

"Mr. Phelps moved that the resolution heretofore adopted by the Board be so far modified as to authorize the attorney of the Board to take such steps as in his jugdment are requisite to set aside the recent agreement of compromise between the city of New Orleans and the N.

O. M. and C. R. R. Co. to maintain and reinstate the appeal proposed to be dismissed by such agreement, with power to associate with him counsel in Washington to appear in the Supreme Court to oppose the dismissal of the appeal, and to hold the fund decreed from said compromise, so as to restore it if the compromise is annulled, or to claim it for the Board if said compromise becomes a finality."

Carried

A true copy:

T. WOLFE, Jr.,
Secretary.

The application of the Board of Liquidation to this Court, opposing the dismissal of the appeal, and to be admitted a party to the suit.

The Court stayed the motion to dismiss until the Board should prosecute its suit to vendicate its right. See minutes of this Court, Oct. 1882.

THE COMPROMISES OF 1820 AND 1851, AND ACTS OF LEGISLATURE RELATIVE THERETO.

The compromise of 1820, concerning a portion of the Batture in front of Municipality No. 2, of New Orleans:

SECTION 1. *Be it enacted by the Senate and* House *of Representatives of the State of Louisiana, in General Assembly convened,* That so much of the eleventh section of the act entitled "An act to amend an act entitled An Act to In-

corporate the city of New Orleans," approved February 17th, 1805, and other acts amending the same, approved March 8, 1836, as provided: That no disposition shall ever be made of the Batture in front of the faubourg St. Mary, in violation of the transaction or compromise in relation to the said batture, entered into between the Mayor, aldermen, and inhabitants of the city of New Orleans and Edward Livingston and others, before Hughes Lavergne, Notary Public, on the 20th day of September, 1820, be, and the same is hereby repealed.

SEC. 2. *Be it further enacted, etc.*, That the Council of Municipality No 2 be, and the same is hereby authorized and directed to cause to be laid off two streets between New Levee street and the Mississippi River, extending from Montgomery's property down to Common street, as represented on a plan drawn by George T. Dunbar, Surveyor of said Municipality No. 2, in the year 1846, and approved by the said Council.

SEC. 3. *Be it further enacted, etc.*, That the Batture or space of ground adjoining the Mississippi River, and lying between the said river and the street to be laid off in conformity with this act, fronting said river, shall be left open, and so kept for the accommodation of the public, and the convenience of commerce.

SEC. 4. *Be it further enacted, etc.*, That in the event of an agreement between the original parties to the said compromise of 1820, for the sale of said Batture, it shall be the duty of the said Council of Municipality No. 2 to lay off into lots all that portion of said Batture, not re-

served in the foregoing acts for streets, and the accommodation of the public and convenience of commerce, and dispose of the same, according to the terms and conditions of said agreement; Provided, that, in the aforesaid agreement a provision is made, that one-third of the net proceeds of the sale of the aforesaid lots shall be appropriated to the liquidation of the debts or liabilities of the General Sinking Fund of the City of New Orleans.

THE COMPROMISE OF 1820.

The act first recites the names of the contracting parties, i. e., the City and the batture owners, and then proceeds in its material parts, as follows:

The said appearers of the first part, i. e. the batture owners, as well in their own personal names as in their respective capacities, and as actual possessors of the batture in front of the faubourg St. Mary, or representing them, wishing to favor the public in the use of the river bank which lies in front of said batture, and to facilitate the communication of the streets which shall open thereon, do by these presents make donation *inter vivos* and irrevocable, and in the best form a donation can be made, to the Mayor, aldermen, and inhabitants of New Orleans, represented by the honorable Joseph Rouffignac, Mayor of said city, here present, accepting and stipulating for the said Mayor, aldermen, and inhabitants, by virtue of the authority vested in him by the resolution of the City Council of 21st of August last, a copy whereof in due form is

hereunto annexed, all the rights which the said donors have or can have, each, so far as he is concerned.

1. In all that portion of the said batture or alluvion which exists from the lower limit of the property of William W. Montgomery, and running down the boundery line between the city and the faubourgh St. Mary, and then from the foot of the new levee, from its outer side to the marginal line of the waters of the river when they are at their lowest stage.

2. In the new levee which has been constructed on the whole extent of the said portion of batture, as well as the land upon which it rests, just as the said levee shall be when it shall have been repaired, enlarged, and provided with a wooden revetment in its whole extent by the said donors, as it is hereinafter agreed.

3. In the land necessary for the extension of the streets of said faubourg, to the new levee, which shall be opened, filled up and provided with platforms and railings on the river at the expense of the donors, as it shall be hereinafter prescribed in said act.

4. In the land of Tchoupitoulas street, in the whole extent of said faubourg, giving it a width of sixty feet, including the sidewalks. All of which lots so donated are not subject to any mortgages on the part of the said donors, as it appears from the certificate of the recorder of this city of this date, with the exception of the following, that is to say, mortgages to the amount of thirty-two thousand eight hundred and twenty-nine dollars, granted by Edward Livingston in the manner following, viz:

The present donation is made with the express condition, without which said donation would never have been made, namely:

That all the lots of ground which are the object of the present donation shall remain unalienable, and not subject to seizure for debts or otherwise, in the hands of the corporation of the city of New Orleans, and said corporation shall never, and under no pretext whatsoever, (to which clause the said mayor, aldermen and inhabitants of New Orleans, represented as they are, expressly obligate themselves by these presents), sell, exchange, give away, or otherwise dispose of, in whole or in part, in any manner whatever, nor appropriate to other public uses, the said lots of ground, than to that to which they are naturally destined, nor even erect thereon any constructions or buildings, except it would be in the sole and only case where the city council should deem it beneficial to the public interest to authorize the erection of a fire engine upon such portion of the batture so donated as said council shall designate; it is, however, understood that the restriction to erect buildings or constructions on the part of the corporation shall not be so construed as to prevent the mayor and city council of New Orleans from establishing or causing to be established jetties or wharf to facilitate commerce, should said mayor and city council deem it advisable.

* * * * * *

And always, in consideration of the present donation and the advantages that may result therefrom to all parties,

the said donors bind themselves to demolish or caused to be demolished, at their costs and expenses, within one month from the date of this act, all wooden buildings or wooden constructions now existing upon the batture of faubourg St. Mary, and to cause all materials to be removed therefrom. They also bind themselves, their heirs and assigns, not to erect any houses or buildings upon said batture unless the walls thereof be of brick or stone, or roofed with tiles or other incombustible material. Any houses or buildings erected in contravention of this clause would be demolished at their cost and expense.

And the said mayor, aldermen and inhabitants of New Orleans, represented as above set forth, bind themselves hereby to have constructed a public market (halle), which shall be placed in faubourg St. Mary, for and in consideration of the sum of three hundred dollars, to be paid by said donors to the corporation of New Orleans, for each and every lot of 30 feet front on the new levee which they possess in the batture of faubourg St. Mary, no matter what the depths of said lots may be; this payment to be made by giving their respective notes to the order of the mayor of New Orleans, payable in one and two years from the date of this act, each giving a special mortgage upon the lots respectively owned by them upon the batture to secure payment of the notes due at maturity; and in case the sum produced by said notes should be more than sufficient to defray the expense for building said public market, the mayor, aldermen and inhabitants of New Orleans, represented as above, bind themselves to employ the surplus

towards building another public market, which shall be placed in the faubourg Marigny.

And in execution of these present agreements, the said donors did forthwith, in presence of me, notary, and the undersigned witnesses, deliver to the Hon. Joseph Rouffignac, who acknowledges receipt thereof, their respective notes, dated this day, to the order of said Joseph Rouffignac, Mayor of New Orleans, for the lots they respectively possess upon the batture of the foubourg St. Mary, agreeably with the annexed plan, all of which notes were paraphed "ne varietur" for identification with the present act, and were furnished in manner following, viz:

(Here follows description of notes:

The 11th section of the act of the Legislature of Louisiana, of 1836, dividing the city into municipalities, referring to the property acquired by the city in the compromise of 1820, was as follows, Session Acts, p. 33:

Provided further, that no disposition shall ever be made of the batture in front of the faubourg St. Mary, in violation of the transaction or compromise, in relation to said batture, entered into between the mayor, aldermen and inhabitants of the city of New Orleans and Edward Livingston and others, before Hughes Lavergne, notary public, on the twentieth of September, eighteen hundred and twenty; and that the municipality of the upper section of the city of New Orleans shall not in any manner obstruct

or impede the inhabitants of any portion of the city of New Orleans, in the free use and enjoyment of any of their rights on said batture.

THE ACT OF 1850, RELATIVE TO BATTURE.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*, That so much of the eleventh section of the act entitled "An act to amend an act entitled An Act to Incorporate the city of New Orleans," approved February 17th, 1805, and other acts amending the same, approved March 8, 1836, as provided: That no disposition shall ever be made of the Batture in front of the faubourg St. Mary, in violation of the transaction or compromise in relation to the said batture, entered into between the Mayor, aldermen, and inhabitants of the city of New Orleans and Edward Livingston and others, before Hughes Lavergne, Notary Public, on the 20th day of September, 1820, be, and the same is hereby repealed.

SEC. 2. *Be it further enacted, etc.*, That the Council of Municipality No 2 be, and the same is hereby authorized and directed to cause to be laid off two streets between New Levee street and the Mississippi River, extending from Montgomery's property down to Common street, as represented on a plan drawn by George T. Dunbar, Surveyor of said Municipality No. 2, in the year 1846, and approved by the said Council.

SEC. 3. *Be it further enacted, etc.*, That the Batture or space of ground adjoining the Mississippi River, and lying

between the said river and the street to be laid off in conformity with this act, fronting said river, shall be left open, and so kept for the accommodation of the public, and the convenience of commerce.

SEC. 4. *Be it further enacted, etc.*, That in the event of an agreement between the original parties to the said compromise of 1820, for the sale of said Batture, it shall be the duty of the said Council of Municipality No. 2 to lay off into lots all that portion of said Batture, not reserved in the foregoing acts for streets, and the accommodation of the public and convenience of commerce, and dispose of the same, according to the terms and conditions of said agreement; Provided, that, in the aforesaid agreement a provision is made, that one-third of the net proceeds of the sale of the aforesaid lots shall be appropriated to the liquidation of the debts and liabilities of the General Sinking Fund of the City of New Orleans.

THE COMPROMISE OF 1851.

First appear the batture owners and the city and the stipulations are as follows:

Which said appearers declared that whereas, by the aforesaid act of the twentieth of September, eighteen hundred and twenty, the new levee, now constituting New Levee street, together with all the batture then formed on which might thereafter be formed on the outside of said levee, extending to the water's edge of the river Mississippi, along the front of the then faubourg Saint Mary, from the

city line below to the property of W. W. Montgomery above, were ceded and given to the city of New Orleans as property inalienable and not liable to seizure, but to be forever left open for the uses to which it was naturally destined, which said property from that period to the present time has remained in that condition under the administration and at the expense of the city of New Orleans and of the second municipality thereof.

And whereas, the said batture has, in the meantime, increased to such a degree as to be no longer required in its full extent for the purposes contemplated by the parties to the said act:

And whereas, the council of the municipality number two did, on the seventeenth day of June, eighteen hundred and forty-six, approve a plan drawn by George T. Dunbar, for laying out the new streets through the whole extent of said batture between New Levee street and the Mississippi river, extending from Montgomery's property down to Common street, and did propose to sell and dispose of the lots of ground as designated on the said plan;

And whereas, the said batture is increasing every year in extent, and becoming less adapted to the object for which it was intended by the act of the twentieth September, 1820, and instead of being an accommodation to the public, and a convenience to commerce, retards business and increases the expenses of the merchants and the community in general;

Now, therefore, the said appearers having agreed to alter its destination, moreover declared that they had

agreed and stipulated, and do by these presents in their several capacities aforesaid agree and stipulate, as follows, to-wit:

First. That three streets, to be named Fulton street, Front street and Delta street, shall be laid out and opened through the said batture according to the plan drawn by said Dunbar and approved by the council, with this difference, viz., that Fulton street and Front street shall be each sixty feet wide, and lots formed to be numbered and to have such form and dimensions as set forth on the plan prepared by Joseph A. Beard, auctioneer, copies of which plans are deposited in this office for reference.

Second. That the lots composing the square or islets between the said three new streets shall be sold at public auction by Beard and May, auctioneers of this city, or by such other auctioneer as may be named by the council of municipality number two and the parties to this act, and it shall be made the duty of such auctioneer or auctioneers to draw up a formal proces verbal of the sale of the said lots, and to sign the same, and to deposit a duplicate thereof with the undersigned notary, and acts of sale of the said property shall be passed before the said notary and shall be signed by the finance committee of the said council and by the purchaser or purchasers, and acts of sale thus signed shall be binding upon all the said parties of the second part as vendors. That the said auction sales shall be made after advertisement in at least two newspapers published in New Orleans, and shall be continued from time to time until all the lots are sold. That the lots

in the squares between New Levee and Fulton streets shall be sold in the winter of 1851 and 1852, unless the sale shall be postponed by consent. That the lots in the squares between Fulton and Front streets shall be sold in the winter of 1852 and 1852, unless the parties to this act shall consent and agree to some other time of sale, with the exception of the two squares bounded by Poydras, Fulton and Girod streets and the river, which are not to be sold until, in the opinion of the council of municipality number two, they can be improved without interfering with the space necessary for the convenience of commerce at that part of the landing. That the lots in the squares between Front and Delta streets shall be brought into the market and sold whenever the council of municipality number two shall determine the same to be susceptible of private ownership and no longer necessary for the convenience of commerce. That the said lots shall be sold on the following terms and conditions, to-wit: One-fifth of the price to be paid in cash, and the balance in equal instalments (divided into coupons if necessary) in one, two, three and four years, with six per cent. interest from the day of sale, and eight per cent. per annum after due, the payment whereof shall be secured by special mortgage on the property sold.

Third. That immediately after the sale of the property aforesaid or of any portion thereof, the proceeds, whether in cash or notes, or both, after deducting the necessary costs and expenses attending the sale alone, shall be divided and distributed in the manner following, to-

wit: One-third shall be paid and delivered to the proper persons authorized by law to receive the same, to be applied to the payment of the old city debt or general sinking fund of the city of New Orleans. One-third shall be paid and delivered to the original parties to the contract of the twentieth of September, eighteen hundred and twenty, or the heirs and legal representatives thereof, whose assent is given to the present agreement, each one respectively to receive respectively in proportion to the front of the lots, or portions of ground originally owned by him as shown by the said contract; and the remaining one-third of said proceeds shall be paid and delivered to the treasurer of the said Municipality No. Two, for the exclusive use and benefit of the said municipality.

Fourth. And it is, moreover, well understood and agreed to by and between the said parties, that the said one-third part of the proceeds coming to the said parties of the second part, shall be paid over to each of them in the proportion hereinbefore set forth by the undersigned notary, as soon as practicable after the sales aforesaid; it being well understood, also, that in the said three grand divisions of the said proceeds, the notes to be divided shall be so arranged as to be as nearly as possible, equalized between the said three parties so far as the responsibility and standing of the several drawers thereof are concerned.

Fifth. That three-quarters of lots of ground between North Market and South Market streets, and designated on the plans as markets, shall belong to the said Munici-

pality No. 2, upon the condition that the said municipality shall erect thereon market houses or other public buildings, or shall leave the same open as public squares, and shall in no event dispose of or sell same as private property, *and that all the portion of the batture between Delta street and the river Mississippi above Lafayette street to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be and the same is hereby vested in perpetuity and full ownership in the said Municipality No. 2, in favor of whom said appearers to this act hereby cede and relinquish forever all their claims in and to the batture, as well as all and every enlargement thereof or accretion thereto by new formations.*

And, finally, it is well understood and agreed to, by and between the said contracting parties, that this agreement or compromise is, in no manner, to change, alter or prejudice the position or claims, of any kind or nature whatsoever, which may now exist, or which may hereafter arise among or between any of said parties of the second part to any particular amount or portion of the said one-third of the proceeds of the sale of the property aforesaid.

THE FIFTEENTH SECTION OF ACT No. 26 OF 1869, SESSION ACTS OF THAT YEAR, p. 28.

"*Be it further enacted, etc.*, That the said company, with consent of the owners of lands fronting upon any navig-

able water course, or after such lands have been acquired by the company by purchase, release, donation or in any other manner, in accordance with the laws of the State of Louisiana, may erect, construct and thereafter maintain and use wharves, warehouses, depots or other buildings and structures, in and upon the margins, or upon the portions of the margins reserved to public use, of any and all navigable rivers, bayous or water courses in the State of Louisiana, whenever the same may be deemed, by a majority of the directors of the company, necessary and requisite for the legitimate and convenient transaction of its business. And within the limit of incorporated cities or towns, the Mayor and majority of the council of such city or town may authorize the construction of said wharves, warehouses, depots or other buildings and structures, in front of all public squares, or streets that may be bounded by such navigable water courses. *And be it further enacted*, That the said company, for the purpose of connecting its railroad with the railroad of other companies, and with mines and manufactories within the State of Louisiana, is hereby authorized and empowered to construct, maintain and use, by running thereon its engines and cars, such branch railroads and tracks as it may find necessary and expedient to own and use; and, also, to extend, with two tracks and necessary tournouts, its railroad, heretofore authorized by the State of Louisiana, upon the neutral ground in Claiborne street, in the city of New Orleans, upon and along said neutral ground in Claiborne street to Toledano street, in said city; thence by such a course or

route as shall be deemed most proper and expedient by a majority of the directors of said company, to a junction with the line of the railroad which the said company has been heretofore authorized by the State of Louisiana, to construct westerly, from the city of New Orleans; *provided, however*, that for its crossing of the New Canal in the city of New Orleans, the said company shall construct and maintain a draw bridge in the same manner as has been heretofore authorized by the State of Louisiana for the crossing of Carondelet Canal by the railroad of said company; *and there is hereby granted to the said company the right to locate, construct, maintain and use a passenger depot with offices and appartments, suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the City of New Orleans bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; and for the construction of a freight depot, and for other purposes of its legitimate business, to inclose and occupy the blocks of ground, parts of streets and portions of levee in said city bounded by Girod, Water and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street; provided, said company shall not enclose or occupy that part or portion of the blocks of ground within said named limits, which is the private property of individuals until said company has acquired the title thereto*; and said company shall thereafter, if requested by said city, extend the wharf in front thereof equal with the present wharf in front of the northerly corner of the outer block within said limits, recently sold

by said city and now owned by said company. *And be it further anacted*, That the said company is hereby authorized and empowered to locate, construct and build, and thereafter to own, maintain, manage and use a railroad with one or more tracks and suitable turnouts from any point upon the main line of its railroads, as the same shall be hereafter located in the Parish of St. Landry or Calcasieu, towards and to any point upon the line between the State of Louisiana and the State of Texas, in or south of the Pa.ish of Rapides; and all the powers, privileges, grants and franchises which have been heretofore granted to said company, and all the powers, privileges, grants and franchises which are by this act granted to said company or the construction and maintenance of its main line of railroad within the State of Louisiana, shall be and are hereby made applicable to said branch railroad, and for all the purposes of this act, the said branch railroad shall be deemed and taken to form and constitute a part of the said main railroad within the State of Louisiana, in this act designated and referred to."

THE FIFTH AND SIXTH SECTIONS OF THE ACT No. 31 OF 21st FEBRUARY, 1870, SESSION ACTS,

PAGES 55, 58 AND 59.

SEC. 5. That the grant made to the said company in and by the act entitled "An Act to Expedite the Construction of the Railroad of the New Orleans, Mobile and Chattanooga Railroad Company, in the State of Louisiana,"

approved February 17, 1869, of "the right to locate, construct, maintain and use a passenger depot with offices and appartments suitable for its legitimate business, upon that part or portion of the levee or streets and grounds in the city of New Orleans, bounded by Canal, Delta and Poydras streets and a line parallel to one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot, and for other purposes of its legitimate business, to enclose and occupy the blocks of ground, parts of streets and portions of levee, in said city bounded by Girod, Water and Calliope streets; *provided*, said company shall not enclose or occupy that part or portions of the blocks of ground, within said last named limits, which is the private property of individuals until said company has acquired the title thereto," be and the same is hereby confirmed and is declared to be, and is and shallbe, in exclusion of any and all claim or claims on the part of the city of New Orleans to the possession, occupancy, use, or disposition of, or control over, the said premises or any part thereof, and for all compensation therefor. *And the Mayor and Common Council of said city and all the municipal authorities thereof, are hereby prohibited from, and declared incapable of, passing any ordinance or in any way obstructing the enjoyment thereof by the said company, or of any benefits or advantages to be derived therefrom.* And all ordinances heretofore passed, or which shall hereafter be passed, and any act done, or to be done, by said Mayor and Common Council purporting or intended to convey or grant to any party or parties, other than the said New Orleans,

Mobile and Chattanooga Railroad Company, the right to possess, use and enjoy, or to dispose of, or exercise any control over, the said premises herein above mentioned and described, or any part thereof, are hereby declared and shall be treated and held to be utterly null and void to all intents and purposes. And all persons are forbidden to enter upon or interfere with the said premises, or any portion thereof, under any such pretended ordinance, and all such acts are hereby declared trespass, and all persons who shall commit them, or any of them, shall be held to be, and may be proceeded against as wrongdoers.

SEC. 6. That all that portion of the levee or streets and grounds in the city of New Orleans lying within the following named limits and boundaries, viz: the southerly (or upper) line of Canal street, from the Mississippi river to the easterly line of Water street the eastesly line of Water street, from the southerly line of Canal street to the southerly (or upper) line of Girod street, the southerly line of Girod street from the easterly line of Water street to the easterly line of the lands desigdated for the location of the freight depot of the New Orleans, Mobile and Chattanooga Railroad Company, the easterly line of said depot lands from the southerly line of Girod street to the northerly (or lower) line of the batture rights owned by said company, the northerly (or lower) line of the batture rights from the said depot lands to the Mississippi river, and the Mississippi river from the northerly (or lower) line of said batture rights to the southerly line of Canal street, is hereby expressly dedicated to public

use, and shall forever remain open for such use, and no part of such lands, or of the accretions and the wharf in front of the same, shall ever be enclosed or built upon, or granted for ferry landings, or exclusively appropriated or used by any individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans; provided, however, that the said company may construct, maintain and use across or upon said lands, or any part thereof, its railroad tracks, turnouts and switches, from its main track on Water street, as may be necessary for purposes of ingress to or egress from its depot. And the said city of New Orleans and the Mayor and Common Council and all the municipal authorities thereof are hereby expressly prohibited from passing any ordinance, making any grant, entering into any contract, or doing any act inconsistent with the provisions of this section of this act, or which shall prevent or hinder the laying of the tracks of the railroad of the said New Orleans, Mobile and Chattanooga Railroad Company within the corporate limits of the City of New Orleans, upon the lines or routes heretofore authorized by the State of Louisiana, and which have been surveyed and located therefor, or which have been designated upon the maps of such tracks filed by said company, or which may be hereafter surveyed or located therefor, in or upon the streets of the said city, or in or upon any other lands in the said city, or which shall obstruct, disturb or interfere with such tracks, or with the full, free and perfect enjoyment and use thereof by the said company when land upon such routes and lines; and any and all ordinances, grants, contracts or acts

in violation hereof heretofore passed, made, entered into or done, or hereafter to be passed, made, entered into or done by the said city of New Orleans, or the Mayor and Common Council or the municipal authorities thereof are hereby declared illegal, null and void, and the same shall be so treated and held in all places and under all circumstances.

State of Louisiana, Superior District Court for the Parish of Orleans.

New Orleans, Mobile & Texas Railroad Co.
versus
City of New Orleans. } No. 26069.

Petition—Filed July 8th, 1874.

To the honorable Jacob Hawkins, Judge of the Superior District Court, for the Parish of Orleans.

The petition of the New Orleans, Mobile and Texas Railroad Company, a corporation created by and under the laws of the State of Alabama, and permitted and authorized by the laws of the State of Louisiana to maintain its railway and exercise its rights within the State of Louisiana, respectfully shows :

That by the laws of Louisiana your petitioner has had conferred upon it the right to construct and maintain a railway within this State, and connecting the cities of New Orleans and Mobile, coming into the City of New Orleans by the way of Elysian Fields street ; thence passing up the levee on the front of the city to Calliope street, and to construct in connection therewith, and for the uses

thereof, certain freight and passenger depots, wood-yards, water-tanks, and other necessary buildings and appurtenances have been constructed at great cost, and have been maintained and used for the purposes of commerce to the great advantage of the trade of New Orleans.

That the right of your petitioner to maintain said railway tracks and necessary buildings and appurtenances has been recognized by the honorable the Supreme Court of Louisiana, in its opinions and decrees delivered *on the 4th of May, 1874*, in actions wherein the New Orleans, Mobile and Chattanooga Railroad Company was plaintiff and the City of New Orleans a defendant; by which opinions and decrees an injunction which had heretofore been ordered *by said court* against said railroad company was set aside, and the plaintiff allowed *to remain in possession* of Elysian Fields street and the levee below Canal street, and to maintain its railway therein *absolutely*, and to maintain its railway buildings, etc., on the levee and batture between Canal and Calliope streets, and remain in peaceable use and enjoyment thereof, *subject to certain rights of the City of New Orleans to be judicially ascertained*, as by the records of said suits Nos. 3692 and 3701 of said Supreme Court will more fully appear,

Now your petitioner shows that, being in lawful and peaceable possession as aforesaid of its said costly and valuable property, the City of New Orleans, through its officers and agents, on the 9th day of July, 1874, has tortiously, unlawfully, and violently made an attack upon the property of your petitioner in the neighborhood of St.

Joseph street, within the space heretofore mentioned, and has begun with a force of about one hundred men to demolish and destroy the fences, buildings, and other property of your petitioner, and is still continuing said unlawful and outrageous acts of violence, and will continue the same to the irreparable injury of petitioner, unless restrained by injunction.

That by said acts of outrage and violence by said defendants petitioner has suffered in damages, counsel fees, loss of business, and injury to property the sum of ten thousand dollars.

Wherefor, in consideration of the premises and the annexed affidavit, petitioner prays that a writ of injunction may issue herein according to law restraining and enjoining the defendant, and each and every one of its officers and employees *from interfering in any wise with the property of petitioner in the space heretofore described on the* levee and batture between Canal and Calliope streets ; from destroying or attempting to destroy any property of petitioner within the limits of New Orleans ; from proceeding against petitioner or its property *except by due process in the courts of law*, and that after due proceedings had said injunction be made perpetual, and for citation of said defendant and judgment against it for ten thousand dollars and interest from judicial demand and all costs and general and equitable relief

(Signed)

KENNARD, HOWE & PRENTISS, A. MICOU,

of Counsel.

Writ of injunction to be served on the city of New Orleans,

State of Louisiana, Superior District Court for the parish of Orleans.

New Orleans, Mobile and Texas R. R. Co.
versus
City of New Orleans. } No. 26,069.

State of Louisiana to the City of New Orleans, through L. A. Wiltz, Mayor, greeting :

You are hereby commanded, enjoined and restrained, in the name of the State of Louisiana and of the Superior District Court of the parish of Orleans, from interfering in any wise with the property of petitioner in the space, to wit, on the levee and batture between Canal and Calliope streets, and in the neighborhood of St. Joseph street ; from destroying or attempting to destroy any property of petitioner within the limits of New Orleans, and from proceeding against petitioner or its property, except by due proceedings in the courts of law.

And you are so enjoined until the further order of this honorable court.

Witness the Hon. Jacob Hawkins, judge of our said court, at the city of New Orleans, this 8th day of July, in the year of our Lord, eighteen hundred and seventy-four, in the ninety-ninth year of the Independence of the United States.

(Signed) J. J. HANNAN,
Deputy Clerk.

Superior District Court for the Parish of New Orleans.

New Orleans, Mobile and Texas R. R. Co.
versus
City of New Orleans. } No. 26,069.

And now before the court comes the city of New Orleans, and for answer to the petition herein filed and served upon her she denies each and every allegation therein contained, except such as may be hereinafter admitted.

And for special answer, this appearer further denies the existence of a judgment of the Supreme Court of the State of Louisiana, having the force and effect set forth and alleged in plaintiff's petition; and avers and declares in and by a decree rendered in a certain suit in said court, and known and designated on the docket thereof as No. 3692, being the same judgment rendered to in plaintiff's petition, the court aforesaid merely recognized and intended to recognize a right of way, on the part of the New Orleans, Mobile and Texas Railroad Company, in and through certain public streets of the City of New Orleans.

Further answering, says that the Supreme Court of Louisiana, in and by a certain judgment therein rendered in the said suit of the New Orleans, Mobile and Chattanooga railroad Company vs. City of New Orleans, known on the docket of said court as No. 3701, recognized and decreed the City of New Orleans to be the legal and equitable, the sole and only owner of all the property real and personal, and all the rights, franchises, privileges, and

servitudes claimed and demanded by the said city in the suit aforesaid ; the said judgment, which was founded on the same cause of action, with the same demand, and between the same parties as is set forth in the petition filed in this case, this appearer now pleads against the plaintiffs herein as res adjudicata.

And this appearer further shows unto your honors that the judgment of the Supreme Court of Louisiana hereinbefore last referred to, not only precludes and estops the plaintiff herein from having and maintaining the present action, but that under and by virtue of the same the City of New Orleans is legally and equitably entitled to put in possession and to have absolute and unrestricted control of all the property, real and personal, and all the rights, franchises, privileges, servitudes, and claim of every nature and description referred to in and embraced by the judgment in the aforesaid suit No 3701.

Further, this appearer says that if any portion of the real estate referred to and in and embraced by the aforesaid decree of the Supreme Court in favor of this appearer, or referred to and embraced by the petition herein filed, has been lawfully dedicated to public use, it is the right and duty of this appearer to remove therefrom all impediments and obstacles found in said streets, so as to render the same open and free for use on the part of the public.

Wherefore this appearer prays that upon the original action judgment may be entered in favor of this appearer and against the said plaintiffs ; that the injunction herein

obtained may be dissolved and held for naught ; that this appearer may have and recover, in accordance with law, fifty thousand dollars for damages by her sustained by reason and on account of the aforesaid writ of injunction, and twenty-five hundred dollars special damages for attorney's fees ; and that the said plaintiffs may be furthermore condemned to pay all the costs of this suit.

And reconvening and becoming plaintiff in reconvention, this appearer prays that the New Orleans, Mobile and Texas Railroad Company may be cited to appear and answer this demand in reconvention; that in due course of law the rights, claims, and demand in favor of this appearer, as fixed and decreed by the Supreme Court of Louisiana in the aforesaid suit No. 3701, may not be recognized by this honorable court, but that such order or orders, writ or writs, process or processes, as shall become necessary be directed to issue, not only for the purpose of placing this appearer in the quiet and peaceable, the sole and absolute possession of all the property, rights, credits, claims, demands, privileges, franchises, and servitudes accorded to her by the Supreme Court of Louisiana in manner and form and by the judgment aforesaid, but to maintain and keep this appearer in the quiet, uninterrupted, sole, and absolute possession and enjoyment thereof, free and clear of all hindrance or disturbance on the part of plaintiffs or any party or parties whomsoever.

She further prays that it should appear upon the trial of this case that any part or portion of the landed property claimed by this appearer under the judgment afore-

said has been lawfully dedicated as a public street for the uses and convenience of the public, and that obstructions or obstacles have been placed in such public streets by the plaintiffs herein, or any other person or persons whomsoever, that this appearer may be declared to have the right and authority to remove any and all of such obstructions and impediments and to open the public streets aforesaid for the public use and convenience, and that the said plaintiffs may be perpetually enjoined and restrained from interfering, directly or indirectly, and in any manner whatever with the free and full use and enjoyment on the part of the public of such public streets or places.

This appearer further prays, that plaintiffs may be condemned to pay such damages as are hereinabove prayed for, together with all the costs of suit; and that this appearer may have such other and further order, judgment and relief as may be suited to law and the nature of the case.

(Signed) H. H. WALSH,
Ass't City Att'y.

(Signed) GEORGE S. LACEY,
City Attorney.

(Signed) WM. W. KING,
of Counsel.

State of Louisiana, Superior District Court for the parish of Orleans.

FRIDAY, the 2d day of June, 1876,

Present, the Hon. B. L. Lynch, Judge.

N. O., Mobile & Texas R. R. Co.
vs.
City of New Orleans. } No. 26,069.

The plaintiff presents to the court a petition and a bond for the removal of this cause to the Circuit Court of the United States, according to the acts of Congress, and asks for the filing of the papers and making of the order prayed for.

Whereupon, the court directs the filing of the papers, and that a notice issue to the defendant's attorney, returnable on Tuesday next to show cause, if any, against the order.

A true copy. Extract from the minutes
(Signed) P. E. BURKE,
Day Clerk.

TUESDAY, June 6th, 1876.

Present, Hon. B. L. Lynch, Judge.

N. O., Mobile & Texas R. R. Co.
vs.
City of New Orleans. } No. 26,069.

The rule herein taken for the removal of cause to the Circuit Court of the United States came on this day for trial.

John A. Campbell, plaintiff in rule, defendant being absent and not represented.

When, after hearing the pleadings and counsel, the court considering the law to be in favor of plaintiff in rule—

It is ordered that said rule be made absolute, and, accordingly, that this cause be removed to the Circuit Court of the United States.

Decree—Entered and filed June 11th, 1878.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

N. O., Mobile and Texas R. R. Co. *vs.* City of New Orleans. } No. 7912.

This cause came on to be heard on the pleadings, proceedings, and orders in the cause, and was argued by counsel for all the parties.

The court, after consideration of the premises, declares and decrees that the judgment rendered by the Eighth District Court of the parish of Orleans in the suit No. 19 in that court, between these same parties, the 19th day of December, 1871, and which judgment was affirmed by the Supreme Court of this State, the 4th of May, 1874, upon appeal made by defendant in this suit, has the authority of *res adjudicata* between them, the subject matter of these two suits being the same and the object identical; and the wrongs committed by the defendant, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals.

The court orders and decrees that the injunction granted in this suit by the Superior District Court before its removal to this conrt be perpetuated, and the defendants be enjoined and restrained from disturbing the plaintiffs, their agents, servants, and assigns, in the occupation, use, and employment of their railroad tracks, depots, and other appurtenances, under their charter, which are in and along the streets, squares and spaces specified in the grants of the General Assembly to the said corporation, and also in the order and decree of the said Supreme Court in the cause No. 3692 aforesaid, a transcript of which is on file; and that the defendants pay the costs of this suit.

June 11th, 1878.

(Signed) EDWARD C. BILLINGS,
Judge.

No. 3692. 26th Louisiana Ann., p. 517.

The New Orleans, Mobile, and Chattanooga R. R. Co.

versus

The City of New Orleans et als.

Printed Record, pp. 51 et seq.

This controversy arises out of the acts of 19th March, 1868, 17th February, 1869, and 21st February, 1870, granting to the New Orleans, Mobile and Chattanooga Railroad, for passenger and freight depots, a space of ground equal to about four squares on the batture or levee, in front of the city of New Orleans, between Calliope and Canal

streets, and also granti g the right to lay tracks and occupy as a railroad a strip of land extending down the levee to Elysian Fields street, and out said street to Claiborne street and beyond it. The plaintiffs took possession and enjoined the city of New Orleans and other parties from interfering with them in any manner.

The city denied the validity of the grant on the ground that the State had no right, title, or interest in the property; and alleged that the batture and street in question belonged to it, and the State could not make the divestiture or deprive New Orleans and its inhabitants of the use of said public place and highway, without the exercise of the right of eminent domain, and this respondent further says that the construction of the New Orleans, Mobile and Chattanooga Railroad by the route contemplated through the city and the running therein passenger and freight trains, propelled by steam engines or locomotives, and the enjoyment of the grant and the privileges set forth and contained in the several acts referred to, will prevent the use of the batture and Elysian Fields street as a locus publicus and a highway, will destroy the dedications thereof to the public, and will give the plaintiffs the exclusive use of property which belongs to and is needed by New Orleans and its inhabitants.

The court maintained the demand of the plaintiffs, and perpetuated the injunction. The City of New Orleans appealed.

By consent of parties, the issue as to the Pontchartrain Railroad Company, joined as co-defendants herein, is re-

served from the present decision, and as to them, the case is indefinitely continued.

The question is, had the General Assembly *had* the right to grant the New Orleans and Chattanooga Railroad Company, for freight and passenger depots and tracks, the property in controversy? If the fee or title to the soil belonged to the State, and its use as public places ceased to be necessary, of course, the State, as the proprietor, could make the grant. But is is shown that the State had no title whatever to the property, and it is proved beyond question that its use is necessary for the public. The title of the city to this property is as clear and well established as the title of any political corporation can be to common property, or property dedicated to public use. That portion of the batture given for depots between Calliope and Canal streets was undoubtedly the property of Livingston and the other riparian proprietors who conveyed it to New Orleans, and dedicated it to public use in the act of donation or compromise of 1820. This cession and dedication was recognized and approved by the Legislature.

The batture in front of the old city was reserved for and dedicated to public use when the city was laid out in 1824, and since that time it has been used as a levee or quay. If the fee or title to the soil remained in the sovereignty of France, it passed to the United States by session, because France ceded forever and in full sovereignty, the Territory of Louisiana, with all its rights and appurtenances. The ground in question, therefore, passed to the United States

if it was public property, and it was not transferred to the State of Louisiana when it was admitted into the Union, because the Convention which framed the Constitution acceded to the terms upon which Congress admitted the State into the Union, and by an ordinance forever renounced all right or title to the waste or unappropriated lands. This was expressly decided in the case of De Armas, 5 L., 207. In a controversey between New Orleans and the United States in relation to the ground in question it was decided in 1836, by the highest tribunal of the land, that the United States was without title. (10 Peters, 662).

That Elysian Fields street was conveyed to New Orleans and dedicated to public use by Bernard Marigny, and has been occupied as a public highway since 1805, is not disputed. It is shown that the occupation of these public places by the plaintiffs and the running thereon of passenger and freight trains propelled by locomotives, prevent the use and enjoyment of them by the public, and to a great extent defeat the object of their dedication. The street and quay in question were not granted to New Orleans and dedicated to public use to be owned and occupied by the Chattanooga Railroad. The witness, Captain Leathers: "I am engaged in the steamboat business, commanding steamer Natchez; I have been engaged in the business above thirty-five years; during the last thirty years have been making weekly landings at the port of New Orleans, discharging cargoes of cotton principally. I am very familiar with the river business, which

is now being done, and which has been done for many years past, on the levee of this city. From the woodwork or wharves back to the houses that line the levee—say from Calliope down to Canal street—there is scarcely room enough to do the river business, by which, I mean the business of receiving and shipping freight by the river Mississippi.

"I am very familiar with the levee from Canal down to Jackson square, which is between St. Peter and St. Ann streets. There is not more than enough of levee between Canal street and Jackson Square and the houses that front the river, and the river itself, to do the business which is now carried on by steamboats and sea-going vessels.

"I am familiar with the tracks of the Chattanooga railroad as now laid, say from Calliope street down to Jackson square; the effect of the Chattanooga railroad, with its passenger and freight trains and many tracks, is to leave the ships and steamboats without one-third room enough to do their business. The passing to and fro of those trains and carrying on the business of the road would, in my opinion, have the effect of giving to the road almost, if not entirely, the exclusive use of the batture or levee. There is constantly through the day and all hours of the day a large number of horses and mules engaged in transporting the river freight to and from the levee to the steamboats and ships and sea-going vessels, and I think the passing of the locomotive up and down the levee would seriously interfere with the teams and

drivers ; there are frequently instances of those animals being frightened and running away endangering their lives, as also the lives of others. I have seen the cars stopped at the front of my boat several times, entirely blockading my gangway, and stopping my hands from putting out freight during that time ; the road has left no room scarcely between the track and boats. I am not the only one that has been subjected to this kind of inconvenience ; there have been several boats, and many of them. As the business of the road increases the river business will be subject to a corresponding increase of inconvenience, amount almost to an entire deprivation of the use of the levee. The river business is now almost entirely blockaded up from Jackson square to Customhouse street, and from there nearly ruined by the railroad up as far as St. Joseph street, where the Chattanooga road comes to the river and occupies the entire front. To my knowledge the business of the river has been so obstructed by the use of the batture by the Chattanooga Railroad Company that cargoes of cotton at Vicksburg have been shipped to Savannah, and many owners have shipped their cotton to other ports, which otherwise would have come to New Orleans. In my opinion one-half of the sugar crops will go up the river and not land here on that account. The use of the batture by the road as laid down is tantamount to a monopoly of the batture." The testimony of this witness is corroborated by that of a number of other witnesses, and indeed the truth thereof is not controverted.

If a political corporation can be the owner of property,

of which there can be no doubt, it alone can exercise the right of disposition over its property, because the right of disposition is an essential element of perfect ownership. If the State can grant the property of New Orleans, as attempted in the case before us, New Orleans would cease to be the owner of its own property, because it is the owner who has the exclusive right freely to dispose of his property.

Undoubtedly the State can exercise the right of eminent domain and take for public purposes the property of political corporations as well as the property of individuals upon paying the owners the value of the property so taken. But that is not the controversy here. The question is, can the State give the property of New Orleans to the Chattanooga Railroad Company? We think not. But it is contended that as the grounds in controversy were dedicated to public use, therefore they are a part of the public domain of the State, which can be alienated by it. This is a fallacy. The fee or title was never in the State; therefore these public places form no part of the public domain of the State, and, as we have said, cannot grant what it does not own.

The property of the city dedicated to public use is as much its property as any that it may acquire. Indeed, the streets, walks and quays are more useful and essential to the city and its inhabitants than other property, and they are inalienable by the State. "There can be no difference in principle between ground dedicated as a quay to public use and the streets and alleys of

a town and as to the streets, it may be asked whether the king could rightfully have granted them. This will not be pretended by any one. And it is believed that the public right to a common is equally beyond the power of a sovereign to grant, unless he disposes of it under the power to appropriate property to national use, and then compensation must be paid." (New Orleans vs. United States, 10 Peters, 662).

"The inhabitants of a town cannot be deprived of their streets as the streets are essential to the enjoyment of their property; in other words, by closing the streets the value of the buildings of the town would be greatly reduced, if not entirely destroyed. And if the ground dedicated to public use, which adds to the beauty, the health, the convenience, and the value of town property, be arbitrarily appropriated by the sovereign to other purposes, is not the value of the property which has been bought and sold in reference to it greatly impaired? The value may not be reduced to the same ruinous extent as it would be to close the streets, but the difference is only in the degree of the injury, and not in the principle involved." (10 Peters, 662).

If the State could grant part of the quays and street in question for depots and railroad tracks it could grant the whole; it could grant all the streets and public places, and entirely deprive the city of access to the river, and virtually make its inhabitants prisoners in their own houses. The grant to the plaintiffs differs from this only in the degree of the injury, not in the principle involved. If the

State could make the grant it can authorize the enclosure of the tracks, as it did the space given for the depots, and this would virtually close the port of New Orleans, because the enclosure of the tracks extending most all along the entire front, would cut off communication with the river, and destroy the commerce of the city.

But it is urged that the State can dispose of the property of New Orleans because it granted it corporate powers, and can, at will, modify or abolish the charter. It is true the powers of government delegated to the city may be revoked and its charter abolished, but it by no means follows that the property of the corporation would pass thereby to the State.

"In respect to public or municipal corporations (says Mr. Kent), which exists only for public purposes, as counties, cities and towns, the Legislature, under proper limitations, have the right to change, modify, enlarge, restrain, or destroy them, securing, however, the property for the use of those for whom it was purchased." (2 Kent, 305).

Notwithstanding the power of the Legislature over the city of New Orleans, its property is protected like that of any other person. (Story on the Constitution, sections 1393, 1399; 2 Peters, 380, 412, 413, 627, 657; 6 Cranch, 67, 134; 4 Hill, 144; 3 Dallas, 386; 8 Wend., 85; 11 Wendall, 56, 61, 63; Cooley on Limitations, 486; 21 Penn., 147; 7 Wall., 289; 9 Cranch, 292; 5 Paig, 147; 11 Wend., 157; People ex rel. Failing vs. Commissioners of Town Polantine, 53 Barbour; and 3 American Law Times Reports, page 6; Constitution, art. 110; Constitution of the United States, art. 1, section 10).

In Darmouth College vs. Woodward, 14 Wheaton, Justice Story says: "It may also be said that corporations, such as towns, cities and counties, may in many respects be subject to legislative control. But it will hardly be contended, in respects to such corporations, that the legislative power is so transcendent that, it may at its will, take away the private property of the corporation, or change the uses of its private funds, acquired under the public faith. Can the legislature confiscate to its own use the private funds which a municipal corporation holds under its charter without any default or consent of the corporators? If a municipal corporation be capable of holding devices and legacies to charitable uses, as many municipal corporations are, does the Legislature, under our forms of limited government, possess the authority to seize upon these funds and appropriate them to other uses, at its own arbitrary pleasure, against the will of the donors and the donees? From the very nature of our government the public faith is pledged the other way. The truth is, the government has no power to make a grant even of its own funds when given to a private person or a corporation for special uses."

The Legislature certainly has no greater power than the sovereigns of France and Spain had to the batture or levee in question, and the Supreme Court of the United States held in the case in 10th Peters, referred to, where a part of the identical property was in controversy, that "the public right to the common was beyond the power of the sovereign to grant."

New Orleans or its inhabitants had therefore a right to the levee or quay which could not be defeated, and it was "beyond the power of the sovereign to grant," this property to any one long before Louisiana became a State and long before there was a corporate power to the city. The right to use the batture as a public place therefore exist, independently of the delegation of corporate power, and the modifying or withdrawing thereof, can in no manner affect it. So, therefore, whether the State recalled the power of government delegated to the city or not is immaterial. The right of the inhabitants cannot be defeated because the proof shows that the levee is absolutely necessary to public use, and the occupation thereof by the plaintiffs impairs and greatly defeats the object of its dedication.

When a locus public becomes unnecessary for public use, of course the State can change the destination ; it then becomes property in commerce belonging to and subject to the will or disposition of the owner, whose rights were in abeyance pending the existence of the charge of servitude. But without the consent of the donors and the donees, as in the case before us, the State cannot take the property dedicated to one purpose and apply it to another. It cannot take the batture granted to New Orleans for a quay, and to be used for the commerce of a river, and give it or any part of it to the Chattanooga Railroad. As the State was utterly without title the grant to the plaintiffs conferred no right whatever to the property. It is useless to argue that the grant to the railroad only give a

temporary use of the ground, and that it is subject to be recalled by the State. If the State had the right to make the grant the plaintiffs have the perpetual use of the property, which is equivalent to ownership, and the State cannot recall or in any manner defeat it, because of the provisions of the Federal Constitution prohibiting a State from impairing the obligation of a contract.

It is also absurd to ague that the grant is only the exercise of an administrative power over these public places. A grant which confers exclusive use in perpetuity and subjects a thing granted to such debts and encumbrances as the grantee may see fit to impose, cannot fairly be called the exercise of merely administrative power over a locus publicus.

The grant virtually changes the distination and passes the title (if the State had any to pass), because it puts the property in commerce and subjects it to exclusive control and disposition of the plaintiff, makes it as the common pledge of their creditors liable to seizure under execution. Here then a considerable part of a locus publicus, proved to be essential to the existing object of the dedication, is granted to a private corporation in perpetuity, can be sold, mortgaged and otherwise subjected to the debts, and yet it is gravely argued that this is not a change of destination and a grant of the fee, but is only a mode of regulating or administering a locus publicus which the State can rightfully exercise. The proposition is too absurd to require serious argument to refute it.

After carefully examining the record and considering

the authorities and ably printed arguments presented by the eminent counsel engaged in this litigation, we have come to the conclusion that plaintiffs must fail in their demand, for two reasons, either of which seems to be fatal to their pretensions:

1st. Because the Legislature could not change the destination of these public places, bring them into commerce, and subject them to the disposition of the plaintiffs while the object of the dedication continues, and it is proved that these public places are now essential to the uses for which they were dedicated to the public.

2d. Because if the State could have changed the destination, it could not have granted the property, because the moment the charge or servitude in favor of the public is removed, the property stands subject to the will and disposition of its owner, the City of New Orleans, and like all other property in commerce, it can only be disposed of by the owner.

As the State was not the owner, the plaintiffs acquired no title by the grant. Much has been said of State sovereignty, and of the power of the State over the city, but we cannot, in this controversy, adjust the matter or determine the limits of this power, because the State is not a party, and because the solution of the question is not necessary in this case.

The State has simply passed by the grant whatever title it had to the plaintiffs, and the suit is simply a controversy for property between persons holding by different grants. In order, therefore, for the plaintiffs to

recover, they must show a title superior to the titles of those who granted the property to New Orleans, and dedicated it to public use.

So, therefore, whether the public places in controversy can be administered by the State or the city is a question that does not concern the plaintiffs. When it is ascertained as we have, that they acquired no title by the grant, their cause of complain is ended.

It is, therefore ordered, that the judgment therein be annulled and the injunction be dissolved, and it is now ordered that there be judgment for the City of New Orleans, and that prayer in reconvention for an injunction be granted, and it is ordered that the plaintiffs be restrained and inhibited from occupying the property in controversy.

It is further ordered that plaintiffs pay costs of both courts.

(Signed) W. G. WYLY,

JAMES G. TALIAFERO,

Assistant Justices.

I concur in the conclusions arrived at in the opinion pronounced by Mr. Justice Wyly, and reserve the right to place the grounds of my concurrence in a separate opinion.

(Signed) P. H. MORGAN,

Ass't Justice.

Concurring opinion of Mr. Justice Howell.

The plaintiff's counsel states the question in this case thus:

"Has the State the power to make the grants of authority to the plaintiffs to lay tracks, construct depots, and to occupy the batture for the purpose set forth in the acts of the Legislature relative to the corporation?"

I think the Legislature may grant such authority as to "public places," but in my opinion, a portion of the batture embraced in the grant has been reduced to the ownership of the City of New Orleans, and as to such portion the authority of the State is no greater than to any other property held in private ownership, so long as the municipal corporation exists.

I therefore concur in maintaining the injunction in favor of the city only as to the property or squares shown to belong to it, but in other respects, I think the judgment of the lower court should be affirmed.

The Chief Justice dissented from this decree, maintaining the validity of the grants. His dissent is in 86th An., from p. 524 to 529.

On the rehearing granted in the case the following decree was pronounced:

New Orleans, Mobile and Chattanooga Railroad Company vs. the City of New Orleans, No. 3692.

Appeal from the Eighth District Court for the Parish of Orleans.

Mr. Justice Morgan:

The sole question presented in this case is, has the State

the power to grant a railroad company the right of way through a street in this city? A thorough examination of this question has led us to the conclusion it has.

It is therefore ordered, adjudged and decreed that the judgment heretofore rendered by us be avoided, annulled and set aside, and it is now ordered, adjudged and decreed that the judgment of the District Court be affirmed with costs.

This decree thus affirmed in on pp. 383-4 of the printed record. It sustained the validity of the grants.

Dissenting opinion of Mr. Justice Wyly.

The State can grant the right of way to a railroad company, but the company can only get the land necessary for the tracks and depots by expropriation or purchase. I had occasion to express my views on the main question involved in the opinion of this court, delivered on 19th May, 1873.

I therefore dissent in this case.

(Signed) W. G. WYLY.

I concur in the dissenting opinion of Mr. Justice Wyly.

(Signed) J. G. TALIAFERO,
Associate Justice.

In the other case between the same parties, on the question of the validity of these grants, the Supreme Court of the State decided (printed record, p. 7 et seq.) against their validity as follows:

No. 3701.

New Orleans, Mobile and Chattanooga Railroad Company
vs.
City of New Orleans et als. Charles Morgan, Intervenor.

WYLY, J. The question presented in this case is the same as that just decided, and for the reasons therein given,

It is ordered that the judgment herein be annulled, and the injunction be dissolved; and it is now ordered that there be judgment for the City of New Orleans, and that the prayer of the latter in injunction be granted; *and it is ordered that the plaintiffs be restrained and inhibited from occupying the property in controversy.* It is further ordered that plaintiff pay costs of both courts.

Superior District Court, Parish of Orleans.

New Orleans, Mobile and Texas R. R. Co.
versus
City of New Orleans.

Supreme Court of the State of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, May 4, 1874.

N. O., M. & C. R. R. Co.
versus
City of New Orleans. } No. 3701.

Appeal from the Eighth District Court, Parish of Orleans, No. 4.

Mr. Justice Howell delivered the opinion and decree of the court in the words and figures following, to-wit:

On rehearing:

The plaintiff company enjoined the City of New Orleans from leasing or selling, and from interfering with plaintiffs in occupying and enjoying, holding and acquiring certain

lands granted to the plaintiffs by and described in the following clause of section 15 of Act No. 260, 1869, to-wit:

"And there is hereby granted to the said company the right to locate, construct, maintain and use a passenger depot, with office and apartments suitable for its legitimate business, upon the part or portion of the levee or streets and grounds in the City of New Orleans, bounded by Canal, Delta and Poydras streets, and a line parallel to and one hundred and fifty feet easterly from Delta street; and for the construction of a freight depot, and for other purposes of a legitimate business, to enclose and occupy the blocks of ground, part of street and portion of levee in said city bounded by Girod, Water and Calliope streets, and a line parallel to and two hundred and ninety feet easterly from Water street, provided said company shall not enclose or occupy that part or portion of the blocks of ground within said last named limits, which is the private property of individuals, until said company has acquired the title thereto." The plaintiffs allege that they have acquired by purchase all of the private property within the boundaries of the said grant.

The only answer filed by the city to the original and supplemental petition to plaintiffs in this suit is a general denial. The other answers are to the intervention of Charles Morgan, and this branch of the suit has been disposed of, and is not before us; but the question presented and discussed by both parties is the right of the State to make the said grant, the city claiming to be the owner of said grant, subject only to a servitude in favor of the pub-

lic as long as it may be needed for public purposes, and the State asserting absolute ownership and control of the land as public places.

If they be "public places," in the ordinary legal signification of these words, it may be that the State has the control as serted. We will here inquire into the rights of the city as to the lands.

In 1820, the batture and that portion of the city was owned or claimed by the heirs and assigns of one Bertrand Gravier as riparian proprietors, and there being some difficulty with the city as to the ownership and use thereof, the parties entered into a compromise by notarial act in September of that year, by which it was stipulated that all lots of ground outside of a certain line should remain inalienable and be used for no other public purposes than those for which they are naturally designated.

When in 1836 the city was divided into municipalities, it was provided that no disposition should ever be made of the said batture in violation of said compromise, and that the Second Municipality, in which it was situated, should not obstruct the inhabitants of any part of the city in the free use thereof.

By the continued accessions this space of ground became inconvenient for public use, and in 1850 the Legislature repealed that portion of the act of 1836 prohibiting any disposition thereof, authorized and directed the Second Municipality to lay off two additional streets according to a certain plan, declared that the balance of the batture should be left open, and so kept for the accommo-

dation of the public and the convenience of commerce, and that in the event of the agreement of the original parties to the said compromise for the sale of the said batture, it should be the duty of the Second Municipality to lay off in lots all not needed for streets and public purposes as above, and dispose thereof on terms to be agreed on; provided one-third of the proceeds should be appropriated to the general sinking fund of the city.

In pursuance of this act the said parties, with the Second Municipality, which was represented by a committee, agreed by notarial act on 20th June, 1851, to change the destination made in the compromise of September, 1820; that three streets should be laid out, certain squares divided into lots and sold at auction within different periods of time and on specified terms, which sale should be binding on the parties then contracting with the Second Municipality as vendors; that the proceeds be divided into three parts, one to be paid to the said original parties, one to the general sinking fund of the city, the other into the treasury of the Second Municipality; that three specific squares be reserved for market-houses, and that portion not divided into lots for sale should be, in the language of the act, "vested in perpetuity and full ownership in said Municipality No. 2," in favor of whom the said parties then contracting therewith ceded and relinquished forever all the claims in and to the said batture, as well as all and every enlargement thereof, or accretion thereto, by new formation.

It is by this act, it is contended, the city, which has

succeeded to the rights of the Second Municipality, acquired the title to and full ownership of the ground now in controversy.

The title, it would seem, was thereby vested in the city so far as the original owners, parties to the above act could confer it, and the property is under the exclusive control of the city as owner, for the benefit of the inhabitants, and subject to the servitude in favor of commerce if needed, unless there is in law some such relation between the municipal corporation and the State as maker, all property acquired by corporation the property of the State and subjects to its control.

Is this so?

A municipal corporation is appropriately defined to be "the investing the people of a place with the local government thereof." Salk, 183.

It has no power not conferred upon it expressly or by fair implication by the law of the State creating it. Both the persons and the place inhabited by them are indispensable to the constitution of such a corporation. It is an agency to regulate and administer the internal concerns of a locality in matters peculiar to the place incorporated and not common to the State or people at large; but duties and functions may be and are conferred and imposed not local in their nature; it possesses two classes of power and two classes of rights, public and private.

In all that relates to one class it is merely the agent of the State, and subject to its control; in the other it is the agent of the inhabitants of the place; the corporators maintain the

character and relation of individuals, and is not subject to the absolute control of the legislature, its creator. Among this latter class is the right to acquire, hold and dispose of property, to sue and be sued, etc. It is true that these rights are originally derived from the legislature ; but once conferred they are to be exercised while it exists at the will of the corporation, in its own and as to its own interest, for the inhabitants, just as certain rights are conferred on private corporations not sui juris, as minors and married women, but are not afterwards under the control of the legislature.

Dillon on Municipal Corporation, 2d ed., chap. II, §§ 9a to 10a; chap. IV., §§ 34-40 and notes. Cooley's Constitutional Limitations, pp. 235-'6, 238.

In § 39 Mr. Dillon says: It may assist to an understanding of the extent of legislative power over municipal corporations proper (incorporated towns and cities) to observe that these as ordinarily constituted possess, according to many courts, a double character, the *own* governmental legislation or public; the other in a sense proprietary or private. The distinction between these, though sometimes difficult to trace, is highly important, and is frequently referred to, particularly in the cases relating to the implied or common-law liability or municipal corporations for the negligence of the servants, agents, or officers in the execution of corporate duties and powers.

In its governmental or public character the corporation is made by the State one of its instruments, or the local depository of certain limited and prescribed political

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In its governmental or public character the corporation is made by the State one of its instruments, or the local depository of certain limited and prescribed political

powers to be exercised for the public good, on behalf of the State, and not for itself. In this respect it is assimilated, in its nature and functions, to a county corporation, which, as we have seen, is fully part of the governmental machinery of the sovereignty which creates it. Over all its civil, political, or governmental powers, the authority of the legislature is, in the nature of things, supreme and without limitation, unless the limitation is found in some peculiar provision of the constitution of the particular State. But in its proprietary or private character the theory is that the powers are supposed not to be conferred finally or chiefly from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct legal personality, and as to such powers and to property acquired thereunder and contracts made with reference thereto the corporation is to be regarded as quo ad hoc, a private corporation, or at least not public in the sense that the power of the legislature over it is omnipotent.

Mr. Cooley, at page 238, says:

"The rule upon the subject we take to be this: Where corporate powers are conferred there is an implied compact between the State and the corporation that the property which they are given the capacity to acquire for corporate purposes, under their charter, shall not be taken from them and appropriated to other uses. If the State grants property to the corporation the grant is an executed contract, which cannot be revoked. The rights acquired,

either by such grants or by another legitimate mode in which such a corporation can acquire property, are vested rights and cannot be taken away."

In 29 Vermont, p. 12, it was said:

"But while the legislative power (to enlarge, restrain, or even destroy municipal corparations, as the public interest may require) may be exercised over public and municipal corporations, it has uniformly been held that town and other public corporations may have private rights and interests vested in them under their charter, and as to those rights they are to be regarded and protected the same as if they were the rights and interests of individuals or private corporations."

In 18 Cal., 490, Mr. Chief Justice Field, as the organ of the Court, takes the ground that the real estate or private property of a municipal corporation is protected by the clause in the National Constitution, the inviolability of contracts; that all legislative authority over it must be exercised in subordination to this guaranty, and that it is subject to legislative control to the same extent, but no greater extent, than all other property in the State.

In 9 Cranch (U. S.) 336 and 52, Mr Justice Story expresses the opinion that, "in respect to public corporations, which exists only for public purposes, such as counties, towns, cities, etc., the legislature may, under proper limitations, have a right to change, modify, enlarge or restrain them, securing, however, the property for the uses of those of whom and at whose expense it was originally purchased."

This is reiterated by Chancellor Kent, 2 Com. 305, and by Mr. Justice Washington, in Dartmouth College case, 4 Wheat, 518, 663. In this last case Mr. Justice Story, at page 694, says: "But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendent that it may at its will take away the private property of the corporation, or change the use of its private funds acquired under the public faith."

In 18 L. 213, it is said: "Urban property fronting on a water course is entitled to alluvian as well as rural estates; and cities may acquire June alluvians, but it must be as proprietor of the front, or riparian proprietor." (See also 10 A. 54 and 7 A. 505.)

We are aware that very different views have been expressed by very high authority, and that some of the authors and jurists from whom we have quoted have used language susceptible of a different construction, and declared the aversion of municipal powers into public and private unsatisfactory, but after a careful consideration of the opinions on both sides we have come to the conclusion that a municipal corporation may own property to and over which the legislature has, while such corporation exists, no right or control in opposition to or independently of the will or consent of the corporation; and we think this is consonant justice.

There is a principle involved in it. The principle that those who have to pay should have a voice in the disposal of what is paid for; a principal which is a barrier to centralized or organized power; a principal that protects every

person in the control of his own private affairs; a principal which the judiciary intended to maintain.

The theory or argument that the legislature has absolute ownership and control of all the property and rights of a municipal corporation because the corporation is represented in the legislature is not conclusive.

Such representation is only in matters properly within legislative action, just as the representation of all other portions and inhabitants of the State.

The private rights of the corporation are as much protected as those of individuals, and it is a fact, manifest to all, that the corporation of such a city as New Orleans is a necessity. The multiplying and complicated interests of the compact and increasing community are such that the legislature cannot administer them, and some of them are of such a nature as not to be within mere legislative action, but are to be conducted under general rules, thus necessitating the creation of an intellectual body, with something more than governmental functions; but which do not constitute an *imperium in imperio*.

If, then, a municipal corporation can acquire the fee-simple of property, we think the squares intended for the depots of the plaintiffs were so acquired, and this cannot be taken by the Legislature while the city corporation exists.

The Legislature expressly recognized and ratified the compromise of September 1820, in which the parties donating or designating acted as riparian proprietors, and in the act 257 of 1850 the section of the act of 1836 pro-

hibiting the violation of said compromise was repealed. and the Municipality No. 2 was authorized to enter into an agreement with the said parties "for the sale of the said batture" on certain conditions, which were complied with. If it be urged that the third section of said act of 1850 required the portion not then laid off into streets to be kept open forever to commerce, and the answer is, that act No. 333 of 1853 authorized the withdrawal therefrom of such as may not be needed for public uses, and this has been done by the city (which cannot sue itself) in the subsequent laying off of other streets, and selling two and a half squares in the block of square (within the State grant) nearest the river and which had been purchased by the plaintiffs, All this is recognized by the Legislature in the act under which plaintiffs now claim, by requiring them to purchase, and by them in making the purchases; while this legislation may be construed as making such recognition, it can be invoked in aid or support of the power to make this grant only on the theory that the city owned the property simply as the agent of the State, a theory which we do not adopt as to this property, because we think the city can own private property, and that the former owners intended to, and did by the act of 20th June, 1851, transfer the title thereof to the city, subject only to the uses of commerce and of the public while so needed.

And such must have been the opinion of the plaintiffs when they made the offer which they allege, to purchase a part of this very ground from the city, about the time

this suit was instituted; and their petition seems to be constructive on the hypothesis that the city had such rights to the said property as to make a resort to the laws relative to expropriation necessary.

The act of 1850 may have been necessary to give the Municipality No. 2 the authority to enter into an agreement with the owners, but the power having been exercised, and the conditions complied with, the title of said parties (which was recognized in the said act) vested by the notarial act of June, 1851, as we think, in the Municipality, which then took the place of the said former owners, with all their rights, including the right to bring into commerce such portions as might become necessary for public use.

It is contended, however, that the case of Parish vs. Municipality, 8 A., 145, fixes the character of the ground in question as a locus publicus, in the technical sense of the term, and intimates that so much of the act of 1850 as may confer any rights upon the Municipality is unconstitutional.

An examination of the case will show that the matter in controversy was the servitude of view and way claimed by plaintiff, and that the case went off on an exception; that plaintiff had no cause of action. The right therein asserted of the Legislature to change the distinction of a portion of the batture previously dedicated to the public use is not denied; but this is not inconsistent with the right of the riparian proprietor to sell his property, and his right, or that of his vendee, to withdraw that property

from the position of a locus publicus, when not needed as such under existing legislation.

The antecedant cases had reference to the legislation and the rights of parties thereunder, prior to the act of 1850, and the transfer of June, 1851, under which the rights of the city have acquired. But in those cases, the right of riparian proprietors to the batture were recognized subject to a public servitude, and the ownership of the city as against said proprietors was denied. Judge Martin, however, in 18 L., 249, contended that the formations in front of the city did not belong to owners of the lots along a certain line, but vested in the city, and he insisted that his views were sustained by the decision of the United States Supreme Court in 10 Peters, 662.

The majority of the Court decided in favor of the riparian proprietors; and we think these parties have conveyed their rights to the portion of the batture now in controversy to the city, for the inhabitants; that those rights are protected by the Constitution now just as those of the former owners were, the city having the capacity to own property for the exclusive use and benefit of the inhabitants, and having acquired all the rights of the former owners, and that the city or inhabitants cannot be compelled to contribute the squares of ground in question to the plaintiff without compensation.

Whether they will or not make such contribution voluntarily, in consideration of the benefit resulting from the establisment of the railroad, is a question not pertinent

here; we are to pass only on the legal rights of the parties

In our opinion, the injunction improperly issued in this case. But as the city has made no claim against the plaintiffs, our former decree was erroneous in granting a demand in reconvention and inhibiting the plaintiffs from occupying the property in controversy. Under the pleadings all we can do is to render judgment in favor of the city, dissolving the injunction and dismissing plaintiff's suit, leaving the parties to their rights under the laws relative to the expropriation of property.

It is therefore ordered, that our former decree be set aside, and it is now ordered that the judgment appealed from be reversed, and that there be judgment in favor of the defendant, the City of New Orleans, dissolving the injuntion herein and dismissing plaintiff's suit, with costs, in both courts, without prejudice to the rights of the parties under the laws of expropriation.

Mr. Justice Wyly concurs in this decree for the reasons given by him in the former opinion of the court.

A true copy.

[SEAL] (Signed) M. P. JULIAN,
Deputy Clerk.

109-221

OFFICE SUPREME COURT U.S.
FILED
OCT 9 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 997.

THE BOARD OF LIQUIDATION

vs.

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY ET AL.

THOS. L. BAYNE,
JOHN L. CADWALADER,
For Appellees.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 997.

THE BOARD OF LIQUIDATION

vs.

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY ET AL.

STATEMENT.

On the 11th day of October, 1882, the city council of the city of New Orleans passed an ordinance authorizing the dismissal of its appeal taken in 1878, in the case of The City of New Orleans *vs.* The New Orleans, Mobile and Texas Railroad Company, No. 17 of the docket of this Court, of last term, as follows:

"MAYORALTY OF NEW ORLEANS,
"CITY HALL, *October* 11*th*, 1882.

"No. 8079, Administration Series.

"Whereas propositions have been made for the compromise and settlement of the suit and matters involved therein, known as The City of New Orleans *vs.* The New Orleans, Mobile and Texas Railroad Company, now pending in the supreme court of the United States for the district of Louisiana, on an appeal taken by the city of New Orleans from

the judgment of the court affirming and declaring as *res ddjudicata* the judgment rendered by the eighth district court for the parish of Orleans, on the 15th day of December, 1871, which judgment was affirmed by the supreme court of the State of Louisiana, No. 3692, in favor of said New Orleans, Mobile and Texas Railroad Company and against the city of New Orleans, affirming constitutionality of the several acts of the Legislature of Louisiana of 1868, 1869, and 1870, relative to said railroad company, and the grants, rights, and privileges made to said company. And to grant and confirm the New Orleans, Mobile and Texas Railroad Company, as reorganized, and the Louisville and Nashville Railroad Company in the grants, rights, occupancy, and privileges heretofore made by the city and granted and confirmed by the State of Louisiana to the New Orleans, Mobile and Chattanooga Railroad Company, and the New Orleans, Mobile and Texas Railroad Company, in and by the several acts of the Legislature, No. 28, of 1868, Nos. 26 and 67, of 1869, and No. 31 of 1870.

Be it resolved, That the mayor of the city of New Orleans is hereby authorized and directed to accept the proposition made, and to compromise and settle with the New Orleans, Mobile, and Texas Railroad Company, as reorganized, and the Louisville and Nashville railroad, recognized as successor, and entitled to the rights, grants, and privileges heretofore made to the New Orleans, Mobile, and Chattanooga Railroad Company and The New Orleans, Mobile, and Texas Railroad Company, and the matters in controversy and the suit of the City of New Orleans *vs.* The New Orleans, Mobile and Texas Railroad Company, dismissing said appeal, acquiescing in the judgments rendered in favor of said railroad company, and confirming to the New Orleans, Mobile and Texas Railroad Company the rights granted by the city of New Orleans, as set forth in the preamble heretofore, and in consideration of forty thousand dollars; and the mayor is authorized to receive the same and to sign any

and all agreements necessary or proper to carry out this ordinance and the compromise and settlement above mentioned, and to have the appeal taken herein by the city of New Orleans dismissed, and acquiesce in the judgments rendered in favor of the railroad company as a final settlement of the same.

Adopted by the council of the city of New Orleans, October 11th, 1882.

JOSEPH A. SHAKESPEARE,
Mayor.

Then follows the act signed by the mayor before the city notary, acknowledging the receipt of the money, and executing the ordinance confirming certain grants and privileges previously made by the city, and also dismissing its appeal in the case No. 17, Supreme Court of the United States, which was merely an appeal from a judgment of the circuit court, declaring that a former judgment of the supreme court of Louisiana, rendered in 1874, was *res adjudicata.* In accordance therewith the city attorney presented to the court a stipulation for the dismissal of the appeal, (p. 141).

The City of New Orleans *vs.* The New Orleans, Mobile, and and Texas Railroad Company, Supreme Court of the United States, No. 17.

In accordance with ordinance No. 7089, adopted by the City Council of New Orleans on the 11th day of October, 1882, and the agreement signed by the mayor of the city of New Orleans, acknowledging a compromise and settlement therewith, and an acquiescence in the judgment rendered by the circuit court of the United States for the district of Louisiana as final in favor of The New Orleans, Mobile and Texas Railroad Company, appealed, the appeal in this case is dismissed, and I respectfully ask that an order of the

Supreme Court of the United States may be made accordingly.

(Signed) CHAS. F. BUCK,
City Attorney of the City of New Orleans.

New Orleans, October 11th, 1882.

I respectfully concur in the application of the city attorney for the dismissal of the appeal.

THOS. L. BAYNE,
Att'y for the N. O., M. & T. R. R. Co., Appellees.

The propriety of making this agreement and settlement of this law suit had been under consideration since August 1st, 1882, as appears by the city ordinances of that date, which were duly published and promulgated at that time, providing for the appointment of a committee of three with the city attorney, to confer with the officers of the railroad company relative to a settlement, (p. 146.)

The following extracts from the opinion of the city attorney, page 146, *et seq.*, describe the character of the controversy and the reasons for settlement:

"The city of New Orleans has agreed to dismiss the appeal under the compromise with the New Orleans, Mobile and Texas Railroad Company, from the decision in the suit filed in the superior court for the parish of Orleans, on the 8th of July, 1874, rendered by the circuit court of the United States on the 11th of June, 1876. From the allegations in the petition it appears that the immediate provocation of the suit was an attempt *vi et armis* to demolish and destroy the fences, buildings, and other property of the company; the allegations being that the city, through its officers and agents, on the 9th of July, 1874, had unlawfully and violently made attack upon the property of the petitioner in the neighborhood of St. Joseph street, within the space heretofore mentioned, and has begun with a force of 100 men to demolish

and destroy the fences, buildings, and other property of the petitioner, etc., and is still continuing said unlawful and outrageous acts of violence, and will continue, to the injury of the petitioner, unless restrained by injunction.

"The company alleged, also, that their right to maintain said railway tracks and necessary buildings and appurtenances had been recognized by the honorable the supreme court of the State of Louisiana, in its provisions and decrees delivered on May 4, 1874, in the action wherein the New Orleans, Mobile and Chattanooga Railroad Company were plaintiffs, and the city of New Orleans defendant, by which opinions and decrees an injunction heretofore issued against the New Orleans, Mobile and Chattanooga Railroad Company was set aside, and the company allowed to retain the levee below Canal street and to maintain its railways thereon absolutely, and to maintain its railway buildings, etc., on the levee between Canal and Calliope streets, and to remain in peaceable use and enjoyment thereof, subject to certain rights of the city of New Orleans, to be judicially ascertained as by records in suits Nos. 3692 and 3701 of the supreme court, as will more fully appear. The city appeared and answered, denying that the decrees of the supreme court of the State had the effect attributed to them by the plaintiff, but, on the contrary, intended to give only the right of way to the company through certain public streets of the city of New Orleans, and averred on the contrary, that the judgment of the supreme court in suit 3701 was *res adjudicata* in favor of the city, and maintained her absolute right and unrestricted control to the property, real and personal, etc. She reconvened, praying that plaintiff's injunction be dismissed, and asked that her rights as recognized in 3701 may be recognized here; if not, such other orders, writ or writs, process or processes, as should become necessary, be directed to issue for the purpose of placing this appearer in peaceful and absolute possession of all goods, properties, rights, credits, claims, privileges, fran-

chises, and servitudes, accorded to her by the supreme court of the State of Louisiana, in the manner and form and by the judgment aforesaid, and to maintain and keep this appearer in quiet and uninterrupted use and absolute possession and enjoyment thereof, free and clear of all hindrance and disturbance on the part of plaintiff or any party or parties whomsoever, etc.

"On the petition of the railroad company the cause was transferred to the circuit court of the United States, and on June 17, 1878, decree was rendered to the following effect:

"The court, on consideration of the premises, declares and decrees that the judgment rendered by the eighth district court for the parish of Orleans, in suit No. 19, of December, 1874, in which judgment was affirmed by the supreme court on the 4th day of May, 1871, upon appeal made by defendant in this suit as *res adjudicata* between them. The subject-matter of the two suits being the same and the object identical, and the wrongs committed by the defendants, as shown by the testimony, affects the property mentioned in the judgment which was rendered by the State tribunals. The court orders and decrees that the injunction granted in this suit by the superior district court, before its removal to this court, be perpetuated, and defendants be enjoined from obstructing, by their agents, servants, and assigns, any occupation, use, and employment of that railroad, tracks, depots, and other appurtenances under their charter, which are in and along the streets, squares, and spaces specified in the grants of the General Assembly to the said corporation, and also in the order and decree of said supreme court in cause No. 3692, aforesaid, the transcript of which is on file, and that defendants pay the costs of this suit.

"The merits of the controversy, if they embrace anything more than a mere question of preventing a forcible interference, which is very doubtful, involve a determination of the question as to what rights, if any, remain to the city

under the decrees in suits Nos. 3701 and 3692 of the supreme court of the State. I will present full extracts from the pleadings and decrees that we may ascertain what was decided.

"It appears that the only point in controversy so far as the pleadings and decree in suit No. 3701, are concerned, is the right of the New Orleans, Mobile and Texas Railroad Company, to enjoin the city from selling to Charles Morgan or to the Morgan Railroad Company, some of the batture property embraced in the grant by the State to the Mobile and Chattanooga Railroad Company.

"The decision therein was that the injunction which had been granted by the lower court be dissolved 'without prejudice to the right of the parties,' to be established by expropriation proceedings. In the opinion of the court stress is laid upon the fact that the question as now stated was the only one presented.

"Mr. Justice Howell said:

"In our opinion the injunction improperly issued in this case, but as the city has made no claim against the plaintiffs our former decree was erroneous in granting the demand in reconvention and in prohibiting the plaintiffs from occupying the property in controversy.

"Underthe pleadings all we can do is to render judgment in favor of the city, dissolving the injunction and dismissing the plaintiff's suit, leaving the parties to their rights under the laws relative to the expropriation of property.

"Now to suit No. 19 of the late eighth district court and the pleadings therein, which became record number 3,662 of the supreme court, it is obvious from the pleadings and the history of this litigation that the parties considered the proceedings and decrees in suit 3701 as not settling any substantial issue between them; and pending that suit, on April 5, 1870, the New Orleans, Mobile and Chattanooga Railroad Company filed this other suit, alleging her grants under the acts of the Legislature, also that the city of New

Orleans and other parties combined to prevent them from laying their tracks and obtaining full possession and enjoyment of their rights.

"That the grants of the Legislature to which the petitioners have reference are clear, direct, and certain in the declaration of your petitioner's rights, and entitle them to the protection they ask for, and praying that the city of New Orleans be enjoined from making or suffering any obstruction to the laying of the tracks of your petitioner as authorized by the acts of the General Assembly, and as laid down and described in the map on file with the mayor, etc. The suit 3701 of the supreme court was commenced by the petitioner in the fifth district court for the parish of Orleans on July 6th, 1869, wherein the New Orleans, Mobile and Chattanooga Railroad Company alleged her several grants from the State. Those grants were complete, absolute, and perfect; but the city of New Orleans claimed that the State could not make the grant without compensation to the city, and pray finally that the city of New Orleans be cited to appear and show cause why the petitioner should not enclose and occupy the grants, etc., the use of which was granted them, and if such city should exhibit any rights that the Legislature had no power to grant, that then the court should proceed under the laws of expropriation, applicable to the case, etc, and pray that the city of New Orleans be enjoined and instructed from bargaining, selling, breaking, or in any wise alienating or encumbering any property before described, until final order or decree of this court. The city of New Orleans, leaving out of consideration the technical pleas to the form and manner of the proceedings, went to trial on the "general issue," without setting up any specific defenses or reconventional demands, leaving to the supreme court as already stated, nothing to decide except the question of the injunction restraining the city from selling or disposing of the property.

"This suit was also complicated by an interven-

tion filed by Charles Morgan, but which has no bearing on the point in consideration, and by consent of the parties the issues involved in the intervention were not passed upon by the supreme court. The judgment of the eighth district court, rendered on the 5th of December, 1871, was in favor of the New Orleans, Mobile and Chattanooga Railroad Company, making the injunction prayed for perpetual, which injunction was reversed, as already stated, by the supreme court, in suit No. 3701.

"This minute statement of the pleadings, judgments, and decrees of suit No. 738, fifth district court, which became suit No. 4 of the eighth district court and 3701 of the supreme court, is necessary in order to understand the effect of the judgments and decrees in suit No. 19 of the eighth district court, and No. 3692 of the supreme court, which were relied on to establish the plea of *res adjudicata* made by the company in the controversy about to be terminated."

Then follows a statement of the pleadings and decisions of the Supreme Court in the cases 3701 and 3962 of the supreme court of Louisiana. He then shows that the city acquiesced during nine years in the decision in the latter case during the continued, unmolested use by the railroad company of streets and spaces of ground for its purposes, and took no writ of error nor appeal, (p. 157.)

Mr. Palfray, acting president of the Board of Liquidation (which had, as members of that Board, three members of the city government, which made the compromise, viz., the mayor, administrator of finance, and comptroller,) says, in his affidavit of 10th November, (p. 198:)

"It was further urged at the Board that even if the transaction was legal the city had no right to the proceeds. The city officials answered that they would stand by the trans-

action notwithstanding the protest of the Board. That meeting ended with the determination by the Board to, at least, stop the appropriation by the city officials of the $40,000, as proposed by them, and the attorney was directed to notify the city council that the Board would assert its right to the fund, and that they would be held liable if that money was paid out. This had the effect of stopping the money, and it is still held by the city. Later, on the 17th of October, the Board met again, and resolved to take all necessary steps to prevent the compromise from being carried into effect, as appears by the resolution adopted at the meeting."

On the 13th of October, the Board of Liquidation adopted the following resolution:

"Mr. Gomilla moved that the $40,000 now in the hands of the administrator of finance, be enjoined, and the attorney be directed to institute legal proceedings at once."

On the 17th of October, this was modified so as to authorize proceedings to set aside, if possible, the agreement made between the city and the railroad company; and, if not, "to hold the fund derived from said compromise, so as to restore it if the compromise is annulled, or to claim it for the Board if said compromise becomes a finality."

An application was presented to this Court by the Board of Liquidation, asking to be substituted in the place of the City of New Orleans, as appellant, and to contest the dismissal of the appeal taken by the city which it had asked to have dismissed.

The Court ordered that this application and the motion to dismiss the appeal should be continued until the next term, with the declaration that the appeal would then be dismissed, "unless the Board of Liquidation begin and

prosecute without unnecessary delay in some court of competent jurisdiction an appropriate proceeding to set aside the compromise which has been made with the city council," (p. 141.)

Chief Justice Waite delivered the opinion of the Court:

"This cause was continued at the request of the parties on the 10th of October. The appellee now presents a stipulation for the dismissal of the appeal, signed by the city attorney of New Orleans, pursuant to the terms of the property in dispute, made with the city council, and asks to have the appropriate order entered upon that stipulation. The Board of Liquidation of the city debt of New Orleans comes to resist the entry of any such order, on the ground that during the pendency of the appeal in this Court, authority over the subject-matter of the controversy has been transferred from the city council to that Board, and that the compromise which has been effected is not binding. The Board also asks permission to prosecute the appeal in the name of the city.

"It is conceded that the city council made the compromise which is claimed, and that the appellee is entitled to a dismissal of the appeal if the council had authority to do what it has done, and the compromise was fairly made. The dispute as to the authority of the council presents questions too important to be settled summarily on these motions.

"It is therefore ordered that the cause, and pending motions be continued until the next term, and that the appeal be then dismissed in accordance with the stipulation on file unless the Board of Liquidation shall begin and prosecute without unnecessary delay in some court of competent jurisdiction an appropriate proceeding *to set aside the compromisv which has been made with the city council.*"

(The italics are ours.)

In December, suit was instituted which resulted in a judg-

ment by the United States circuit court adverse to the Board. Judge Pardee, circuit judge, deciding as follows:

"The facts that control this particular case are not contested. Considering them, I reach the following conclusions:

1st. It is doubtful whether the Board of Liquidation of the city debt has such corporate powers that it can plead and be impleaded by itself apart from the membership of the Board.

2nd. It is also doubtful whether the proceedings of the Board on the 9th of November, 1882, claiming the $40,000 realized by the compromise, did not amount to a ratification of the compromise.

3d. That under the sixth section of the act of 21st of February, 1870, the status of the property in controversy at the time the Board of Liquidation of the city debt was established (act 133 of 1880) was that of property *expressly dedicated to public use*, and that from the character, location, and manner of acquisition of said property the said dedication was within the scope of legislative authority.

4th. That irrespective of the acts of 1869 and 1870, it is probable that said property, by its location, ownership, actual destination, and use, was dedicated to public use, so to remain, until the city authorities under legislative sanction should withdraw it from such use.

5th. That the two decisions rendered by the Supreme court of the State, on May 4th, 1874, in the two cases between the New Orleans, Mobile and Chattanooga Railroad Company as plaintiff, and the city of New Orleans as defendant, each involving the validity of the grants of 1869 and 1870, are to be taken and construed together, and as so construed constitute *res adjudicata* between the parties as to the validity of said grants.

6th. That as by said decrees the railroad company was given an injunction against the city as to said property, and as the city, although asking therefor, was denied such injunction, the thing adjudged between the parties appears to

be that the legislative grants of 1869 and 1870, in favor of the plaintiff company, were valid grants within the scope of legislative authority, and the company should be undisturbed by the city in the use and occupation of the property covered by the grants.

7th. That the suit covered by the compromise, and now on the docket of the Supreme Court of the United States, being one brought by the company solely for an injunction to prevent trespass *vi et armis* and for damages, was a suit that the city of New Orleans had a right to compromise irrespective of the title to the property used and occupied by the plaintiff company.

8th. That irrespective of the validity of the legislative grants of 1869 and 1870, and irrespective of the question whether or not the property covered by the grants and in controversy, was property dedicated to public use, the Board of Liquidation of the city debt created by the act of 1880, is without right to attack the compromise in question, because the city of New Orleans has never turned over and transferred to the Board the said property, and because, as the evidence shows, the said act of 1880, has never been accepted by any creditor, no bond has ever been issued under it, and, therefore, the said act, at best, created a mere naked trust, leaving the real title and ownership of the property in the city, and leaving the Board without any real interest therein.

9th. That the value of the property in 1869, or now, or the propriety of the compromise as made, can cut no figure in the present case, as the power on the part of the city council in regard to making the compromise or the terms thereof, is not controllable by the court, and the complainant is without standing or interest to impeach the council's action.

10th. The complainant's bill should be dismissed with costs.

July 2d, 1883.

(Signed) DON A. PARDEE, *Judge.*"

From this judgment the present appeal is taken; and if this Court shall find that this is a proper case for an appeal, as merely deciding the incapacity of complainant to resist dismissal of the appeal in suit No. 7, and that the appeal can be maintained, which, we submit, we feel satisfied that this judgment will be affirmed, and that the application to set aside the compromise and the motion presented by the Board of Liquidation in case No. 17 of last term, now No. 7, to be substituted as appellant for the city of New Orleans, will be refused. We filed briefs when that motion was presented, and we respectfully refer to them as part of our brief in this case.

In this case the city filed its answer, asserting that it made the compromise in good faith, with full power over the subject, but submitting to the Court. In the meantime the money realized has been seized under execution of a judgment against the city by Mrs. Myra Clark Gaines.

ARGUMENT.

It will be conceded that the application is an unusual one, and that the general rule is that a party cannot appeal in a suit wherein he is not a party, nor where he has other relief.

104 U. S., 578.
94 U. S., 14.
17 Howard, 43.
20 Howard, 221.
2 Black, 527.

The appeal was taken by the city in 1878, and the case was twice continued upon its application in 1881 and 1882.

After it had stood upon the docket of the court four years, and after a committee—of which the city attorney was a member—had been appointed in August to consider the matter, direction was given for dismissal of the appeal, and an agreement was made to confirm to the railroad company certain rights and privileges acquired by it under city ordinances and otherwise. These ordinances are in the record, and will be found at pages 171, 180, 135, 162.

They begin in 1867, continuing till 1882, and they shew grants of rights of way, use of public property for depots and tracks, and it is not contended that these grants were not and are not within the power of the city government.

Other ordinances were introduced in evidence to show that the city government has continuously since the act of 1880 exercised its usual power in making grants to gas companies, railroad companies, elevator companies, and other corporations and persons; and that the Board of Liquidation has not asserted any right to intervene or to resist this exercise of power, (pp. 198, 192, 162, 165.)

The various city charters always gave these powers to the city, and in none of them are they more distinctly declared than in the charter of 1882, as shown in our brief and extracts attached hereto. The record is a large one, and contains much (to which we contributed) that relates only remotely to the only question at issue in this case, which is, whether or not the Board of Liquidation has shown any reason for setting aside the compromise made between the city of New Orleans and the railroad company, wherein grants and privileges made by the city from 1867 to 1882 were confirmed, and wherein the city consented to dismiss its appeal from a judgment of the circuit court, in which the

only issue was whether or not a certain decree of the supreme court of Louisiana constituted *res adjudicata*. Now, we respectfully submit, that if this is conceded, as it must be, there can be no question of the power of the city government to consent to such an agreement. The decree of the supreme court of the State of Louisiana was rendered in 1874, six years before the Board of Liquidation was established. The suit which followed asserted that this judgment was final, and constituted *res adjudicata*, coupled with an injunction to restrain officers and employees from destroying fences and buildings belonging to the railroad company, and asking for ten thousand dollars damages. The decree in this case declared that the judgment of the supreme court was *res adjudicata*, and perpetuated the injunction as follows:

"The court, after consideration of the premises, declares and decrees that the judgment rendered by the eighth district court between these same parties, the 19th day of December, 1871, and which judgment was affirmed by the supreme court of this State the 4th day of May, 1874, upon appeal made by the defendant in this suit has the authority of *res judicata* between them, the subject-matter of the two suits being the same, and the object identical; and the wrongs committed by the defendant, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals. The court orders and decrees that the injunction granted in this suit by the superior district court before its removal to this court be perpetuated, and the defendants be enjoined and restained from disturbing the plaintiffs, their agents, servants, and assigns, in the occupation, use, and employment of their railroad tracks, depots, streets, and other appurtenances which are in and along the streets, squares, spaces specified

in the grants of the General Assembly to the said corporation, and also in the order and decree of the said supreme court in the cause No. 3692, aforesaid, a transcript of which is on file, and that defendants pay the costs of this suit." (Record, p. 13.)

Judge Billings, in deciding this case of The City of New Orleans *vs.* The New Orleans, Mobile and Texas Railroad Company, now No. 7 of the docket, in June, 1878, in speaking of the judgment of the supreme court of Louisiana, No. 3692, p. 531 of Louisiana Reports, and comparing it with the other case and distinguishing it, says:

"I do not say that this last decree is such a decree as I should have rendered, but I find it free from all ambiguity, and that it is manifest by the opinions that preceded it that the supreme court of the State intended to render just such a decree as the words used import, certainly to the extent of giving the complainants the right which, in this suit, they ask to have protected. This being my conclusion, it is my duty to treat the matter as a thing adjudged."

Fed. Reporter, vol. 14, p. 373.

It was from this judgment the city appealed in 1878, and it was this appeal which the city consented to dismiss.

Judge Pardee states the character of the suit, (p. 240.)

"That the suit covered by the compromise, and now on the docket of the Supreme Court of the United States, being one brought by the company solely for an injunction to prevent trespass *vi et armis*, and for damages, was a suit that the city of New Orleans had a right to compromise irrespective of the title to the property used and occupied by the plaintiffs' company."

We might stop here and rest the case upon the statement of the facts and without discussing any other question.

Now, where is there any evidence to show that the city government has lost the power to dismiss its appeal. It was competent to take the appeal in 1878, and to continue the cause in 1881 and 1882. It has been, and continues in the exercise of similar and greater powers, as shown by the ordinances in the record. The Board of Liquidation has not resisted the exercise of these powers. The last city charter granted by the State in June, 1882, (prior to its consent to dismiss) did not in any manner diminish its powers. (Record, pp. 138 and 139.) In this case, as shown, there was no question of title to property involved, but if there had been, section 8 of act No. 20, of 1882, specifically granted to the city the power "to lay off and sell in lots or squares so much of the batture from time to time as may not be required for public purposes; but the right of accretion or to future batture shall never be sold."

Act No. 81 of 1882, (record, p. 138,) provided for the appropriation to public improvements of the proceeds of sales or leases of franchises and privileges, and specially repealed so much of section 5 of act No. 133 of 1880 as might be in conflict. The city has always exercised its legislative discretion and all of its powers as a municipal government. We have had boards of commissioners of the consolidated debt, as a clerical arm of the city government, (record, pp. 35 and 137, also p. 142,) but it had never *title* to any property, and the Board of Liquidation took just what it had.

Admission, p. 35.

Oglesby, President of Board, p. 78.

Title,—legislative discretion, and power to act has always remained with the city. The State has directed it how to

act in certain matters, but the mandate has been to the city. The Board of Liquidation has neither shown that the city Government was divested of authority to make such an agreement as was made in this case, nor has any power or authority in it to set aside such an agreement, nor any reason why it should be set aside. There is no pretense that the compromise or agreement was not fairly made, and after due deliberation. It is apparent that the contest was first between the board and the city as to the appropriation of the money received from the railroad company, (pp. 197, 198.) The city attorney shows that the settlement was deemed an advantageous one for the city, (pp. 146 to 158.) The city dismissed an appeal from a judgment which merely declared that a former judgment of the supreme court of the State was *res adjudicata*, and confirmed privileges granted by previous ordinances. As stated, there was no question of title involved. We could not well estimate the privilege of placing tracks in certain streets, nor the use of certain property granted by the city for wharves and a passenger depot, as late as April and August, 1881, Ordinance No. 7009, April, 1881; Jewell Dig., p. 404; (Record p. 163,) and which would be granted at any time as being advantageous to the city and convenient for the public; but it was shown that if there was any question of the value of ground used by the railroad company, it would not equal one-tenth of the sum claimed (Record p. 169, 170, 171.) But this is not involved, as there is no question raised except as to the power of the city government to make the compromise. It is the consent to dismiss the appeal in this suit which the Board appears here to resist, claiming that it has superceded the city in its power over it. Precedent to this, and as essential before it

can be heard, it seeks to set aside the compromise made by the city and the railroad company of all matters between them, including the dismissal of this suit. Compromises are favored by the law, and will not be set aside except for just cause, clearly proved. "In transactions, as they are defined in our code and in the Roman law, there is, from the nature of such contract, something *aleatory.*" Civil Code, 3038. * * "The object of a transaction is to prevent or put an end to a law suit; adjust the differences of the parties by mutual consent in what they agree, and which each of them pefers to the hope of gaining, balanced by the danger of losing." Davis *vs.* Lee, 20 La., An. Rep. 250. "The law which gives the transaction the authority of the thing adjudged, is founded upon the maxim that there should be an end of litigation; 23 La. An. Rep., 608: Long *vs.* Robinson, 5 An. Rep., 698; 3 An. Rep., 94.

The effort of the Board of Liquidation is to select one item embraced in the compromise, and set it aside, for it admits that it has nothing to do with property devoted to public use, and nothing to do with grants to pass through streets to have space on the levee for wharf room, &c. (Brief, p. 13 and 14.)

Complainants witnesses, Conery and Bell, p. —, show that the squares of ground in front of their property on Delta street, between Canal and Poydras, are unobstructedly open to the public, and used as public property. The passenger depot of the railroad is on ground below Canal street, which was granted to it in April, 1881, by Ordinance No. 7009, in 1881, and about which there is no controversy; and Harahan, p. 170, shows how the railroad tracks and its freight depot are placed, and how little the public use is

impeded; the tracts are smooth with the surface of the streets.

But whether the effort is made to set aside the whole of the compromise or part of it, we respectfully submit to the Court that there has been no good nor just cause shown for setting it aside, and we ask that the decree of the circuit court may be affirmed.

THOS. L. BAYNE,
JOHN L. CADWALADER,
For Appellees.

APPENDIX.

No. 20] AN ACT

"To incorporate the city of New Orleans, provide for the government and administration of the affairs thereof, and to repeal all acts inconsistent and in conflict with its provisions."

SECTION 8:

The council shall also have power, * * * to authorize the use of streets for horse and steam railroads and to regulate the same, to require and compel all lines of railway or tramway in any one street to run on and use one and the same track and turntable, to compel them to keep conductors on their cars and compel all such companies to keep in repair the street-bridges and crossings through or over which their cars run; to lay off and sell in lots or squares, so much of the batture from time to time, as may not be required for public purposes, but the right of accretion or to future batture shall never be sold.

SECTION 28:

That all the rights, titles, and interest of the city of New Orleans, as now existing in and to all lands, tenements, hereditaments, bridges, ferries, streets, roads, wharves, markets, stalls, levees, and landing places, buildings and other property of whatever description, and wherever situated, and with all goods, chattels, moneys, effects, debts, dues, demands, bonds, obligations, judgments, and judgment liens, actions and rights of actions, books, accounts and vouchers, be and they are hereby vested in the city of New Orleans, as incorporated by this act.

SECTION 78:

All laws in conflict, inconsistent or contrary to the provisions of this act, be and the same are hereby repealed.

Approved June 23, 1882.

No. 81.] AN ACT

Entitled an act to authorize the city of New Orleans, in the sale or lease of franchise or right of way for street railroads, or other privileges, to apply the price paid for the same in the performance of works of public improvements of a permanent character, such as paving streets, embellishing parks, etc.

Whereas, Notice, as required by Article 48 of the Constitution, has been given of the intention to apply for the passage of this act; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That hereafter, whenever the city of New Orleans through her proper authorities, shall contract with private corporations, or individuals, for the sale or lease of public privileges or franchises, such as the right of way for street railroads, or for other public undertakings, within her legal power and control, the price paid for the sale or lease of public privileges or franchises, shall be applied by said city in the performance of works of public improvement of a permanent character, such as paving streets, embellishing parks, etc.

SEC. 2. *Be it further enacted, etc.*, That all laws or parts of laws, and especially so much of Section 10 of Act No. 31, Acts of 1876, known as the Premium Bond Act, and of Section 5 of Act No. 133 Acts of 1880, as may be in conflict herewith, be and the same are hereby repealed.

Approved July 5, 1882.

J. H. Oglesby, President Board of Liquidation:

Answer. No, sir; there has been no issue of bonds; we are now issuing bonds only extending the old bonds, but none under act of 1880.

Question. Now, is it not a fact that that act was a failure because it proposed to reduce the debt fifty cents on the dollar and tied the hands of the syndicate?

Answer. To a certain extent. It forbid the syndicate retiring any debts less than fifty per cent., and no bonds were issued under the act of 1880.

Ordinance No. 7009 *of the City of New Orleans. Jewell's Digest, pages* 404, 405.

(Record, p. 135. Passed in 1881.)

ART. 70. (1.) That the New Orleans, Mobile and Texas Railroad Company, as reorganized, their assigns and successors be, and they are hereby authorized, to construct, maintain, and use other portions of their road, the tracks shown upon the map, at and between Poydras and Bienville streets, and the requisite right of way therefor along and cross streets is hereby granted and confirmed to the said New Orleans, Mobile and Texas Railroad Company, as reorganized, its sssigns and successors. When the new tracks are constructed that part of the old track now in use as indicated on said map and between said streets, shall be removed further away from the bank of the river so as to enlarge the space on the levee.

ART. 71. (2.) That the use and occupancy of a certain portion of ground situated on the north side of Canal street, eighty feet wide on Canal street, by two hundred and sixty-seven feet long, running in parallel lines towards Custom-house street, for a passenger depot, to be constructed by said railroad company, according to the plan submitted herewith, is granted to said New Orleans, Mobile and Texas Railroad Company, reorganized, its assigns, and successors for thirty years, with the privilege of renewal for a like term. The city will immediately have removed so much of the present structures on said ground as the railroad company may desire.

ART. 72. (3.) And in consideration wherefor said railroad company agrees and binds itself to pave with square blocks of stone, the space of ground between the north end of said depot and Custom-house street, and indicated in the plan heretofore referred to, exclusive of the portion already paved, also paving a street to be laid off on the river side of said depot, thirty feet wide, extending from Canal to Custom-house street; also the lower end of Canal street, opposite the south end of said depot, a space of ground 80 by 100 feet; also to pay the city's proportion of price for paving the north side of Canal street, from the north curbstone of said street to the neutral ground in said street, extending as far up as Front street, being a space of about 300 feet long by 40 feet wide, whenever the property holders contiguous to

the same shall apply for the pavement of said latter space of ground and pay their share of the price for the same.

Ordinances of 19th August, 1868, and Feb'y 16th, 1867, (p. 174 to 180,) granted important rights and privileges to the railroad company.

Ordinance No. 7282, August 18th, 1882, "granting and setting aside wharf-room for New Orleans, Mobile, and Texas Railroad Company, as reorganized," (p. 162.)

Testimony of James T. Harrahan.

James T. Harrahan, being examined, says that he is manager of the N. O., M. and T. and I. I., and Louisville and Nashville division between New Orleans and Mobile; that the square 27 A, as described on map No. 2, made by J. A. D. Hemecourt, city surveyor, in record No. 144, now No. 17 of the Supreme Court of the United States, is the only square within the grants of use or occupation made by the Legislature of Louisiana upon which there are any buildings; upon this square there is a depot constructed of brick by the railroad company which cost the company about twenty-five thousand dollars. The portion of ground in front of square marked D on said map is an open space used for general purposes of commerce, as is also the portion of ground marked E.

There are some railroad tracks and switches upon said portion of ground. The ties are laid even with the surface of the ground, and the iron a little above, and do [not] materially interfere with the same for general purposes of commerce, except when cars are moving upon them.

The portions of ground marked 26 AJ and 25 AI, the first, between Julia and what would be Notre Dame, if extended through the water, and the second, between Julia, St. Joseph, Water, and Pilie streets, belong to the railroad company, as also that marked H, and the ground between Water, Calliope, St. Joseph, and the river.

The portions of ground marked on said map 15*a*, 14*a*, 13B, and 12*a* are open to commerce and used for its general purposes, and have been so used since the formation of the same as batture front upon the portions of ground, and upon the street of what would be Water street, if extended beyond Girod street, there are several railroad tracks.

First, that of Morgan's Louisiana and Texas Railroad Company; next, those of the New Orleans, Mobile, and Texas Railroad Company, or the Louisville and Nashville Railroad Company, as the same is now called. All of these tracks are laid smooth with the surface of the ground, and do not interfere with the general public use for commerce. The passenger depot of the New Orleans, Mobile and Texas Railroad Company is upon a space of ground on the levee below Canal street, between Custom-house and Canal street and what would be Delta, if prolonged, and the river. It was constructed under an ordinance of the city of New Orleans, No——, Administration "Series,"——, 1881, the wharf below going to the New Orleans, Mobile and Texas R. R. Co., or Louisville and Nashville R. R. Co.—runs about three hundred and fifty-five feet from Calliope street towards Julia street, described in act No.——, of the Louisiana Legislature, and part of said wharf extends above Calliope street toward —— street.

This is occupied under an ordinance of the city of New Orleans.

There are a large number of grants made by the city of New Orleans to the New Orleans, Mobile and Texas Railroad Company for the location of their tracks or their change of position on the levee, which I understand have been offered in evidence.

(Signed) J. T. HARAHAN.

H. C. M.

(Record, pp. 170, 171.)

109-221

Supreme Court of the United States.

THE BOARD OF LIQUIDATION, APPELLANT,

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY, AND THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, APPELLEES.

THOS. L. BAYNE & DENEGRE,
Solicitors for the L. and N. and the N. O., M. and T. R. R. Companies, Appellees.

F. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

Supreme Court of the United States.

THE BOARD OF LIQUIDATION, APPELLANT,

versus

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY, AND THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, APPELLEES.

STATEMENT.

This case arises out of the claim made by the Board of Liquidation to appear as appellant, in the place of the city of New Orleans, in the suit of the City of New Orleans, appellant, vs The New Orleans, Mobile and Texas Railroad Company, No. 17 of the docket of the Supreme Court of the United States. The suit originated in July, 1874, in an application for an injunction to restrain officers of the city of New Orleans from destroying fences, buildings and railroad tracks, and from interfering with the railroad company in the use of streets and property occupied by it.

In June, 1878, the following decree was rendered by the Circuit Court of the United States:

"This cause came on to be heard on the pleadings and orders in the cause, and was argued by counsel for all of the parties. The court, after consideration of the premises, declares and decrees that the judgment rendered by the Eighth District Court of the parish of Orleans, in the suit No. 19 in that court, between these same parties, the 19th day of December, 1871, and which judgment was affirmed by the Supreme Court of this State, upon the 4th day of May, 1874, upon appeal made by defendants in this suit, has the authority of *res judicata*

between them, the subject-matter of the two suits being the same and the object identical; and the wrongs committed by the defendants, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals. The court orders and decrees that the injunction granted in this suit by the Superior District Court, before its removal to this court, be perpetuated, and the defendants be enjoined and restrained from disturbing the plaintiffs, their agents, servants and assigns, in the occupation, use and employment of their railroad, tracks, depots and other appurtenances, under their charter, which are in and along the streets, squares and spaces specified in the grants of the general assembly to the said corporation, and also in the order and decree of the said Supreme Court, in the cause No. 3692 aforesaid, a transcript of which is on file; and that the defendants pay the costs of this suit." The opinion of the court is published in volume 14 of the Federal Reporter, page 376.

In July, 1878, the city of New Orleans appealed from this decree, and this appeal has been pending herein until the stipulation for dismissal was filed in October, 1882. It was twice continued upon application of the city.

The decree in the cause No. 3692, which was affirmed by the Supreme Court of the State of Louisiana in the judgment above, and the opinion of the court upon which it was based, after stating fully the character of the controversy, is as follows:

"There are three distinct issues of law presented for consideration:

"First. It is maintained by the city of New Orleans, as against the railroad company, plaintiff, that the levee and batture in front of that portion of the city lying between Canal street and Calliope street is vested in the municipal corporation; that this ownership is full and complete, and that the grants by the legislature to the company of the right to enter upon and use the same are acts divesting the vested rights of

the city, and therefore unconstitutional and void. It is also distinctly maintained by the city and the other defendants that municipal authorities have the right to determine and regulate the use of the streets and other public places upon which the company claims to be entitled to enter.

"Second. It is maintained by the defendants that the levee or public quay in front of the old city of New Orleans, between Canal and Elysian Fields streets, was originally dedicated by the sovereign of France to public use; that the municipal authorities are the administrators of this public use, and that the acts of the assembly assuming to divert the *locus publicus* in question to a use not originally intended are void, because they divest the vested rights of the community.

"Third. The Pontchartrain Railroad Company, one of the defendants (seconded and sustained by the city of New Orleans), claims the right, by virtue of its charter and an ordinance of the city, to occupy and use the two strips of land on Elysian Fields street, hereinbefore described, upon which the company (plaintiff) claims the right to lay its tracks. The issue involves mixed questions of fact and law, of ownership, of realty, and of the question of the paramount authority to administer the public place in dispute

"1. There has been few instances of litigation more notable than that involving the right of ownership in and to the batture in front of the city of New Orleans. It has occupied the attention of the courts of this State, and of the territory, for nearly seventy years. The Supreme Court of the United States has passed upon certain of the issues, and in the elucidation of the questions involved several of the master minds of the country have devoted their most earnest attention. President Jefferson was engaged in a violent personal controversy with Edward Livingston, who was esteemed among the foremost publicists of the age. The importance of and interest in this litigation resulted from the peculiar character of the property in dispute. At this particular point on the Mississippi the bend of the river

and the course of the currents cause constant sedimentary deposits, so that during the period of a hundred years the accretions have amounted to many squares of valuable land. To whom should this product of the river belong?

"There were three theories: The city of New Orleans claimed it as an accretion to the public streets and levees or quays fronting upon the stream. The front proprietors claim it as an accretion to their property, maintaining that their riparian rights were not affected by reason of their land being within the municipality, or by the fact that the banks of the stream were subject to a servitude in favor of the public, and were separated from their property by a public street. And the United States government claimed the batture in front of the city, as the successor of the sovereign of France.

"The following extract from the admissions of counsel (record, page 50) establishes the history of the property above Canal street:

"'For the purposes of this trial it is admitted that the King of France, prior to the year 1763, granted to the order of Jesuits, for a plantation, certain property lying on the Mississippi river above Canal street, having thirty-two arpents front on the Mississippi river and running back to a depth of fifty arpents; and that, for the same purpose, he granted to various other persons property lying above the aforesaid thirty-two arpents.

"'That in 1763 the Jesuits' plantation was confiscated by the French government, divided and sold. The first subdivision above Canal street, sold as aforesaid, contained, say seven arpents *face au fleuve*; and five other equal subdivisions were sold in like manner.

"'That Gravier acquired the first subdivision about the year 1788. The second, being immediately above Gravier, was acquired by Delord Sarpy; the boundary line between said claim being now designated by Delord street. That Gravier divided his property, in 1788, into squares and lots, and annexed them to the city as 'Suburb Ste. Marie.' Sarpy converted his property from rural into urban in 1806.

" ' That the *locus in quo* above Canal street is embraced within the Gravier and Sarpy claims. That when the aforesaid change from rural to urban was made, the street now called Tchoupitoulas was the nearest street to the river; that at that time there was a batture in front of Tchoupitoulas street; that the same, without any form or ceremony, was, as early as 1788, dedicated to public use, and since that time has been used by the public as a *locus publicus*.'

" While it is intensely interesting to follow the history of this most celebrated litigation, to read and admire the displays of classic learning and eloquence of both bench and bar, it is, as to this suit, utterly unprofitable. The questions of ownership involved have been definitely and finally settled by the courts of last resort. The accretions to the batture in front of the city of New Orleans belong to the front riparian proprietors. 18 La. 123.

" But this case has to do with an incident—the most important incident—of the batture litigation In 1807 the territorial court affirmed the title of the front proprietors to the batture. This victory proved, however, comparatively barren to Livingston and his associates, for though they owned the batture they could not use it, because the city of New Orleans refused to advance the levee or street, and the owners had no authority to do so. In 1819 the Supreme Court rendered a decision in the case of Morgan vs. Livingston et al., 6 M. 19, in which the titles of Livingston and others, transferrees of Gravier, were questioned, if not entirely overthrown. These facts resulted in a compromise with the city of New Orleans, which was entered into September 20, 1820. By this act Edward Livingston and his seven co-front owners of the suburb St. Mary gave to the city the batture. They also gave the right to extend the streets up the levee, bound themselves to build the wharves in front of their property, and presented to the city enough cash to construct a market upon the property. The act first recites: The donors, ' wishing to favor the public in the use of the river side

which lies in front of said batture, and to facilitate the communication between the streets which terminate at that place, have, by these presents, made a donation *inter vivos* and irrevocable, and in the best forms in which the donation may be valid, to the mayor, aldermen and inhabitants of New Orleans.' Record, page 59.

"This act of compromise, or donation as it was called at the time, was examined and passed upon by the Supreme Court in the case of Delabigarre vs. Second Municipality, 3 A. 230. After reviewing the facts and circumstances attending the act of donation, the court held that it was no donation, though having the form, but a compromise, subject only to the rules applicable to a communitative contract. It was a stipulation, though carefully disguised, by which the public obtained the existing batture, with the right to future accretions and other advantages named, in consideration of letting Mr. Livingston and his associates alone in what they possessed.

"The compromise subsequently received the sanction of the legislature. In 1836, in an act amending the charter of the city (acts 1836, page 28, section 11), it was provided, 'that no disposition shall ever be made of the batture in front of the faubourg St. Mary in violation of the transaction or compromise in relation to said batture, entered into,' etc; 'and shall not in any manner impede or obstruct the inhabitants of any portion of the city of New Orleans in the free use and enjoyment of any portion of their rights on said batture.'

"As the years rolled on and left their history, so the currents of the changing river swept by and deposited their sediment. The city grew in commercial importance, but its highway kept receding from the lines of business. The width of the landing became inconvenient. But the place was a *locus publicus*. The city could not sell the property nor build upon it. The State alone could change its destination. Accordingly, in 1850, the legislature passed a law (acts of 1850, No. 257), by which the clause in the act of 1836 was repealed. The council of munici-

pality No. 2 was then authorized to lay off two streets between New Levee street and the river. It was required that the batture in front of the new streets should be kept open, and so kept, for the accommodation of the public and the convenience of commerce. It was further provided, that in the event of an agreement between the original parties to the compromise, the municipality might sell all the batture not reserved as above for the accommodation of the public and the convenience of commerce.

"This act resulted in what is called the compromise of 1851. Record, page 67.

"The survivors and representatives of the parties to the compromise of 1820 made a notarial act with a committee of the council, by which, after reciting the inconveniences to commerce, etc., they agreed to alter the destination and authorize the sale of certain specified portions of the batture in question. The proceeds were to be divided in three parts—one-third to the representatives of the original donors; one-third to a sinking fund, in conformity to the act of 1850, and the remaining third to the treasury of the municipality.

"The following clause in this act occurs:

"'And that all the portion of the batture between Delta street and river Mississippi, above Lafayette street to the line of Montgomery's property, and all that portion of the batture between Front street and the river Mississippi, from Lafayette street down to Canal street, shall be and is hereby vested, in perpetuity and full ownership, in said Municipality No. 2, in favor of whom the appearers to this act hereby cede and relinquish forever all their claims in and to the said batture, as well as every enlargement thereof, or accretion thereto, by new formations.'

"The city now makes this stipulation one of the grounds for claiming unlimited powers of control over the property in contest. But this so-called compromise is only referred to because the counsel for the city lays so much stress upon it. It seems

to be, and in the opinion of the Supreme Court, a dead letter, though made upon the warrant of an act of the legislature. In the case of Parish et al. vs. Municipality No. 2 et al., 8 A. 145, the court held that the stipulation in the compromise of 1820, forbidding the city to alienate or build upon the batture thereby dedicated to the public, was not binding upon the State, by whose sovereign power the destination of this *locus publicus* might be changed. The court said that it would give full effect to the act of 1850, in so far as it changed the destination of a portion of the batture, and authorized the sale of it; but the act was held to be void in so far as it recognized any legal rights in favor of the parties to the compromise of 1820. The effect of this decision was to hold that the so-called compromise of 1850 was of no effect, except in so far as it witnessed a handsome donation from the municipality to the representatives of the parties to the compromise of 1820.

"Without the overshadowing authorization of an act of the legislature the city of New Orleans has had no power, from 1820 until now, to dispose of a square foot of the batture in front of the suburb St. Mary. In the case of Delabigarre reference is made to an ordinance passed by the municipality, ordering a portion of the batture to be sold. The court characterized this act as a glaring usurpation of power, from which no legal effects could result, and added that it was proper to state that the attempt was not persevered in.

"It results from these considerations that the batture in front of the suburb St. Mary, so-called, is public property and not the private property of the municipal corporation of the city of New Orleans. Civil Code, 458.

"This leads to an examination of the power of the State, by legislative act, to regulate the use of this *locus publicus*.

"The counsel for the city of New Orleans and the other defendants insist that the municipal government has the sole power of controlling the use of streets, quays and other public places within the municipal limits; that the legislative acts

divesting the city of such control are laws divesting vested rights, and therefore void.

"In the brief for the city of New Orleans occurs the following expression: 'We desire to keep in mind the distinction which clearly exists between the public and the city of New Orleans: the one, if we may so term it, being a judicial being, represented by the city, and the other a municipal organization, incorporated by law.'

"There is indeed a distinction between the public and the municipal corporation, but it is much broader and different than is indicated in the language quoted. The public is constituted of the free people—the citizens of the commonwealth and those strangers to whom the commonwealth grants its freedom. The public is not represented by any municipal government, but by the authorities constituted in the organization of the State. If this distinction is kept in mind the legal question now being considered will be solved without difficulty.

"There is no question but that the city of New Orleans has the power to administer the use of the river banks and the batture. 18 L. 278. The city may erect wharves (6 R. 349); may remove nuisances or obstructions from the streets or other *loci publici* (1 M. 187; 4 M. 10; 3 L. 563). So the city has full power to regulate and improve the streets, and may grant the right of way to railways. 14 A. 842. These powers correspond to those vested in every incorporated city in the land. But the power of the municipal corporation to regulate the use of the streets and other public places is subordinated to the paramount authority of the State.

"'The fee of the streets of a city, where it has been acquired by the municipality under the right of eminent domain, becomes public trust for general purposes, and is under the unqualified control of the legislature; and any legislative appropriation of it to public use is not to be regarded as the appropriation of private property, so as to require compensation to

the city or municipality to render it constitutional.' Redfield on Railways, vol. 1, page 259, citing 27 N. G. 188 and 47 ; Penn. 325.

" In this case it was held that the city of Philadelphia exercised a portion of the public right of eminent domain in respect to the streets within its limits, subject only to the higher control of the State and the use of the people. Cooley Constitutional Limitations, 208.

" The correct doctrine would seem to be that, under the power granted in the charters of the cities, the local authorities may make all regulations necessary for the control of the public ways and places within the corporate limits ; subject always to the limitation that the municipal government cannot change the destination nor divert to public use the *loci publici*. But when the legislature of the State makes a grant or enacts a regulation within the limits of a city, such grant or regulation is paramount to any grant or regulation made or to be made by the municipal corporation In presence of the greater power the lesser is abated.

" But it is urged in this case that the several acts of the legislature granting to the New Orleans, Mobile and Chattanooga Railroad Company the right to lay their tracks along the line and upon the batture property have the effect of diverting the public property in question to a private purpose, or at least to a purpose different from that to which it was originally dedicated. They insist that such diversion cannot be effected under the pretence of regulating the use of the *locus publicus* but only by the exercise of the powers of eminent domain, and after compensation granted "

The remainder of the opinion relates chiefly to the controversy with the Pontchartrain Railroad, which is not any longer pending.

The decree and final judgment in the case, after disposing of the controversy with the Pontchartrain Railroad and others, is as follows (old record, page 334):

"And it is still further ordered, adjudged and decreed that upon the answer and demand in reconvention filed by the city of New Orleans, and upon the issue made thereon, there be judgment against the plaintiff in reconvention, the city of New Orleans, and in favor of defendants to said plea and demand, the New Orleans, Mobile and Chattanooga Railroad Company; that the several acts of the general assembly, granting the New Orleans, Mobile and Chattanooga Railroad Company the right to construct, maintain and use its tracks, turnouts, switches, depots, etc., etc., along and upon the levee, streets or batture in front of the city of New Orleans, be adjudged to have no right or title of private property in and to the batture property lying in front of the faubourg St. Mary; and that the said property, and especially those spaces of ground described in the grant to the plaintiff, be decreed to be the property of the public, whose destination can only be exchanged by legislative authority, and which the city of New Orleans cannot alienate or encumber."

The character of the controversy in this case is shown by the answer and claim in reconvention made by the city of New Orleans, July 26th, 1870 (record of No. 17, page 126), wherein the city, after denying the rights claimed by plaintiff, avers:

"That all that portion of the real estate or ground claimed by the plaintiff, situated above Canal street, forms a part of the batture lying in the old faubourg of St. Marie; and that on or about the 20th day of September, 1820, a certain act was entered into by and between Edward Livingston and other riparian proprietors, and the city of New Orleans, wherein and whereby the entire alluvion or batture in front of the aforesaid suburb St. Marie, and the accretion thereafter to become attached to the same, were dedicated to the public use and the purposes of business and commerce; and upon the express understanding and condition that the same should thereafter remain and continue a *locus publicus*, out of commerce, and not

to be affected by any adverse claim or grant which might be set up against the same.

* * * * * * * * * * *

"That the acts of the legislature particularly referred to in plaintiff's petition, and the enjoyment of the grants and privileges therein pretended to be granted and conferred, will give the plaintiff the ownership and control of certain property, belonging to this respondent and others, without compensation, and will moreover give to them the possession of a *locus publicus*, the right to the use and enjoyment of which is in the public, composed almost entirely of citizens of the United States; and will thereby and otherwise interfere with and impair rights vested in and contracts in favor of said owners and the public, composed almost entirely of citizens of the United States. That for these and other reasons, the several acts of the legislature of the State of Louisiana aforesaid, and the pretended grants and privileges to the New Orleans, Mobile and Chattanooga Railroad Company, referred to in plaintiff's petition, and by said plaintiff relied on to maintain the present action, were made, passed and given in violation of section 10, article 1, of the constitution of the United States; 1st section of the 14th amendment to the constitution of the United States; section 20, article 6, of the constitution of Louisiana adopted in 1812; article 109 constitution of said State adopted in 1845; article 105 constitution of said State adopted in 1852; article 109 constitution of said State adopted in 1864, and article 110 constitution of said State adopted in 1868; and are therefore absolutely null and void, and without effect."

It is further shown by the statement made of it by the Supreme Court in the first opinion, delivered May 19th, 1873 [26 A. 517], as follows: "This controversy arises out of the acts of 19th March, 1868, 17th February, 1869, and 21st February, 1870, granting to the New Orleans, Mobile and Chattanooga Railroad Company, for passenger and freight depots, a space of ground, equal to about four squares, on the batture or levee

in front of the city of New Orleans, between Calliope and Canal streets; and also granting the right to lay tracks and occupy as a railroad a strip of land extending down the levee to Elysian Fields street, and out said street to Claiborne street and beyond it."

In the next paragraph the answer of the city is quoted, in which the city alleged: * "And the enjoyment of the grant and privileges set forth and contained in the several acts referred to will prevent the use of the batture and Elysian Fields street as a *locus publicis* and a highway, will destroy the dedication thereof to the public, and give the plaintiff the exclusive use of property which belonged to and is needed by New Orleans and its inhabitants."

Associate Justice Howell delivered a partial concurring opinion, in which he distinctly defined the character of the controversy: "The plaintiff's counsel states the question in this case thus: 'Has the State the power to make the grants of authority to the plaintifis to lay tracks, construct depots and to occupy the batture for the purposes set forth in the acts of the legislature relative to the corporation?' I think the legislature may grant such authority as to 'public places;' but, in my opinion, a portion of the batture embraced in the grants has been reduced to the ownership of the city of New Orleans; and as to such portion the authority of the State is no greater than as to any other property held in private ownership, so long as the municipal corporation exists. I therefore concur in maintaining the injunction in favor of the city only as to the property of squares shown to belong to it; but in other respects I think the judgment should be affirmed."

The chief-justice dissented from the conclusion arrived at by the majority of the court, as follows:

"The opinion of my associates in this case is, according to my understanding, so diametrically opposed to the jurisprudence of this State and most of the other States of this Union, that I am compelled to dissent from it.

"The question involved in this case is simply whether or not the legislature can control the public quay or levee of the city of New Orleans without the consent of the city. To show that this is the question for decision, I quote from the brief of the counsel of the city:

"'*Batture above Canal Street.*—The King of France, prior to the year 1763, granted to the order of Jesuits, for a plantation, certain property lying on the Mississippi river, above Canal street, having thirty-two arpents front on the Mississippi, and running back to a depth of about fifty arpents; and for the same purpose he granted to various other persons property lying above the aforesaid thirty-two arpents. In 1763 the Jesuit plantation was confiscated by the French government, divided and sold. The first subdivision above Canal street, thus sold, contained, say seven arpents, *face au fleuve;* and five other subdivisions of five arpents each were sold in like manner. One Bertrand Gravier acquired the first subdivision about 1788; the second, lying immediately above Gravier, was acquired by Delord Sarpy, the dividing line between the Gravier and Delord Sarpy claims being now designated by Delord street. Gravier, in 1788, divided his property into squares and lots, and annexed them to the city as suburb Ste. Marie. Sarpy converted his property from rural into urban in 1806. At that time the 'big road,' now Tchoupitoulas street, formed the division between the lots of ground and batture in front thereof, which was then used by the public as a *locus publicus.*

"'Edward Livingston and others, claiming, as riparian proprietors, to be the owners of the entire alluvion or batture in front of the aforesaid suburb Ste. Marie, and the accretion to become attached to the same, by a certain act between themselves and the city of New Orleans, bearing date on or about the twentieth day of September, 1820, dedicated the aforesaid batture and accretion to public use, and to the purposes of business and commerce, and upon the express umderstanding and condition that the same should thereafter remain and con-

tinue a *locus publicus*, out of commerce, and not affected by any adverse claim or grant which might be set up.

" ' Under, and from the time of the dedication above referred to, that portion of the batture on and over which the New Orleans, Mobile and Chattanooga Railroad Company claim to construct their buildings and run their road, with certain exceptions, which will be shown hereafter, remained open for use as a public place, until the rights of the public to the same were interfered with by the said company '

* * * * * * * * * * *

" The interference of the New Orleans, Mobile and Chattanooga Railroad Company complained of was authorized by an act of the general assembly of Louisiana, which act the defendant alleges is unconstitutional, because it divests vested rights, and authorizes the taking of private property without just compensation. It is manifest, therefore, if the general assembly has the right to control the use of this public place—nay, even to change its destination—the interference of this company is not unlawful. As early as 1848 this court held, in Delabigarre vs. The Second Municipality of New Orleans, that ' the sovereign alone has the right to change the destination of public places. Under the state of facts presented by the record, the attempt of the defendant to change the destination of the ground was a glaring usurpation of power, from which no legal effects could result.' The usurpation spoken of in that case was the passage of a resolution by the municipality ordering a portion of the batture to be sold.

"In Parish vs. Municipality et al. this court said: 'We have already stated that the conditions appended to the nominal gift of the batture amounted to a dedication of it to the public, to be used as an open space, and had no other object. The defendants might, for purposes of public utility, thus deprive the city of the right of alienating the batture or of erecting buildings upon it. But, as we held in the case of the State of Louisiana vs. The Executors of McDonough et al., such a stipula-

tion was at all times under the control of the legislature, who could modify the effects of it and change the destination of the property whenever such a change became of public advantage. Its power to change the destination of it was expressly recognized by us in the case of Delabigarre vs. Second Municipality, 3 A. 330. The power of the legislature to change the destination of public places had been previously recognized in the case of De Armas vs. The Mayor et als., 5 La. 174 and 194; the Mayor et als. vs. Hopkins, 13 La. 351; New Orleans vs. United States, 10 Peters, 733; Municipality No. 2 vs. New Orleans Cotton Press, 18 La. 122. These cases were all argued by the ablest counsel at the bar, and the opinions of the court were prepared with uncommon care. In two of them Judge Martin dissented on other points, but the court was, in all the cases, unanimous in recognizing the power of the legislature to change the destination of the quay and of the batture in front of the city of New Orleans. After so many solemn adjudications the defendants do not appear to have had any serious claim which they could compromise. So that, while the act of 1820 was a compromise, under the form of a donation, the act, executed in 1851, would seem to be a donation under the form of a compromise. The plaintiffs acquired no rights under that act, the gift not being intended for them. The act passed by the legislature in 1850 has been adduced by the defendants in support of some undefined right. It is our duty to give full effect to that act, so far as it changes the destination of a portion of the batture and authorizes the sale of it. But we deem it also our duty to disregard, as an assumption of judicial power unauthorized by the constitution, whatever in it may be considered as recognizing in the defendants any legal rights under the compromise, after the change of destination of the property.' 8 A. 149.

"What is this batture, levee or *locus publicus*, upon which the defendant has built its railroad tracks and depots, under the authorization of the legislature? It is a public place,

which combines the public purposes of a landing for steamboats and vessels, a place for the temporary deposit and keeping of goods, a place for the arrival and departure of travelers and their baggage, and a public highway for vehicles employed principally in the transportation of articles of commerce. It is a public thing, according to the definition of the code; 'Common property, to the use of which all the inhabitants of a city or other place, even strangers, are entitled in common—such as streets, the public walks, the quays.' C. C. 458. Wherever the public is concerned, the State is not without an interest, and may consequently legislate upon the subject. In this case, however, the legislature has not changed the destination of the property, and the grants or privileges conferred upon the railroad company are for the convenience and benefit of the public. The testimony of witnesses have been referred to to show that the use of the batture by the railroad company will be injurious to the commerce of the city. In my judgment this testimony only proves that the witnesses are about a quarter of a century behind the age in which they live.

"The defendant is a municipal corporation, which is defined to be 'an investing the people of a place with a local government thereof.' Such coporations are created and exist for the public advantage; they can exercise only such powers as are conferred upon them by the legislature, which may be withdrawn from them by the legislature at will, unless restrained by the constitution. There is no restraint on this power of the legislature in the constitution of this State. The legislature might take away the right of the city to legislate in any manner in regard to this batture. In the Fifth Annual our predecessors said: 'The government of cities and towns, like that of the police juries of parishes, forms one of the subdivisions of the internal administration of the State, and is absolutely under the control of the legislature.' 661. Judge Dillon, in his work on municipal corporations, says: 'With the excep-

tion of certain constitutional limitations, presently to be noticed, the power of the legislature over such corporations is supreme and transcendent; it may change, divide and even abolish, at pleasure, as it deems the public good requires.' Page 70 *et seq.*; 3 Wend. 1335; Cooley on Constitutional Limitations, 191, 192; 14 A. 406; 12 A. 515.

"Municipal corporations are mere instruments or agents of the State government; consequently, if the city of New Orleans had actually purchased the batture it could not control it as a private individual could his property. 'Being a mere agency of the government, it is evident that the municipality cannot itself have that complete and absolute control and power of disposition of its property which is possessed by individuals over their own. For it can hold and own property only for corporate purposes, and these purposes are liable at any time to be so modified by legislation as to render the property no longer available.' Cooley C. L., page 235.

At page 88 of his work Judge Dillon says: 'The legislature, as trustee for the general public, has full control over the public property and the subordinate rights of municipal corporations. Accordingly it may authorize a railroad company to occupy the streets in a city without its consent and without payment.' See Clinton vs. Railroad Company, 24 Iowa 455; People vs. Kerr, 27 N. Y. 188; Railroad Company vs. Applegate, 8 Dana 289; Wagner vs. Railroad Company, 25 N. Y. 526, 533; Pratzman vs. Railroad Company, 9 Ind. 467; 13 Ind. 853, 551; Moses vs. Railroad Company, 21 Ill. 522; Cooley on Con. Lim. 555, 556; 17 N. J. Eq. 75; 17 Barb. 494; 47 Pa. State 325; 35 Cal. 325. See also Redfield on Railways, page 259 vol. 1. He says: 'The fee of the streets of a city, when it has been acquired by the municipality under the right of eminent domain, becomes a public trust for general public purposes, and is under the unqualified control of the legislature; and any legislative appropriation of it to a public use is not to be regarded as the appropriation of private property so as to

require compensation to the city or municipality to render it constitutional.'

"I think the judgment of the district court should be affirmed."

After the full statement by the court of the exact character of the controversy, and the earnest discussions evinced by the different opinions expressed by the judges, a rehearing was applied for in May, and on the 1st of December was granted; then, on the 19th of that month, an oral argument was heard by the court. In May following the first judgment was set aside, and the judgment of the district court, which we have heretofore quoted, was affirmed.

Mr. Justice Wyly dissented, in a short opinion, as follows: "The State can grant the right of way to a railroad company, but the company can only get the land necessary for the tracks and depots by expropriation or purchase. I had occasion to express my views on the main question involved in the case in the opinion of the court delivered on the 19th of May, 1873." And Judge Taliaferro concurs with him.

The Circuit Court of the United States declares this decision of the Supreme Court to be *res adjudicata;* and it would seem to have been impossible to have presented a case where the controversy had been more accurately defined in the pleadings and the discussions, as exhibited in the opinions of the judges of the Supreme Court, the opinion of the judge of the District Court, and the perfectly distinct decree of that court, which was affirmed by the Supreme Court of the State of Louisiana. All of these show what was in issue between the parties, and that the decision of the United States Circuit Court, declaring that this judgment constituted *res adjudicata*, was correct. The decision was rendered in this circuit by the district judge, holding the circuit court, who says: "There is no doubt but that if a decree is free from ambiguity it speaks for itself, and cannot be qualified by the opinion by which it may have been preceded. Plique vs. Ferret, 19 La. 313; Keane vs. Fisher, 10

La. A. 261; 101 U. S. 351; 24 Howard 333; Smith vs. Kernocan, 7 Howard 199. * * I do not say that this last decree is such a decree as I should have rendered, but I find it free from all ambiguity, and that it is manifest from the opinion that preceded it that the Supreme Court of the State intended to render just such a decree as the words used import—certainly to the extent of giving the complainants the right which in this suit they ask to have protected. This being my conclusion, it is my duty to treat the matter presented as a thing adjudged." Federal Reporter, vol. 14, page 376.

3 La. An. Rep. 313; 14 A. 798; 12 A. 198; 24 A. 34, 22, 162; 28 A. 625; 30 A. 579; Civil Code 2286; 6 Wheaton 113; 18 Howard 120; 22 Howard 363. Mr. Justice Campbell, in this last case, says: "So deeply is this principle implanted in her jurisprudence (Louisiana) that commentators upon it have said the *res judicata* renders white that which is black, and straight that which is crooked. *Facit excurvo rectum, ex albo nigrum.* No other evidence can afford strength to the presumption of truth it creates, and no argument can detract from its legal efficacy."

Judge Dillon comes to the same conclusion as to these cases, and says: "After much conflict of opinion the Supreme Court of Louisiana finally reached the conclusion that the legislature of the State had the power to authorize a railway company to use for its road part of the batture or levee in front of New Orleans." Dillon on Municipal Corporations, volume 2, page 696, note 2.

The city appealed from the judgment in July, 1878. It was continued in the Supreme Court of the United States twice, on application by the city; and, finally, on the 11th of October, 1882, an agreement was made for dismissal of the appeal, as per ordinance No. 8079—the agreement signed by the mayor, and stipulation for dismissal by the city attorney. These were filed in the Supreme Court of the United States. The Board of Liquidation then presented itself, and asked to be heard as

appellant in place of the city, on the ground that the city had no power to dismiss the appeal and make the compromise; that under act No. 133 of 1880 and act No. 58 of 1882, complainants had become the assignees of all property not dedicated to public use; that the rights of the city involved in the suit had passed to said board, and that it was the only competent power to deal with as to the dismissal of the appeal and the compromise made.

In the argument before the Supreme Court on the application made by complainants to be substituted for the city of New Orleans as appellants, "on the ground that during the pendency of the appeal in this court authority over the subject-matter of the controversy had been transferred from the city council to that board, and that the compromise was not binding," acts of the legislature and other matters were referred to which had not been printed in the briefs, and affidavits were filed there. After consideration the court "ordered that the cause and pending motions be continued until the next term, and that the appeal be then dismissed, in accordance with the stipulation on file, unless the Board of Liquidation begin and prosecute, without unnecessary delay, in some court of competent jurisdiction, an appropriate proceeding to set aside the compromise which has been made with the city council."

Hence this suit; and, as will be seen, the only questions are whether or not the city of New Orleans had the power to dismiss its own appeal? and, if it had not, whether complainants are to be substituted for the city?

The cause was heard before Judge Pardee of the United Circuit Court, and he decided as follows:

"The facts that control this particular case are not contested. Considering them, I reach the following conclusions:

"1st. It is doubtful whether the Board of Liquidation of the City Debt has such corporate powers that it can plead and be impleaded by itself apart from the membership of the board.

"2d. It is also doubtful whether the proceedings of the

board, on the 9th of November, 1882, and preceding thereto, claiming the forty thousand dollars realized by the compromise, did not amount to a ratification of the compromise.

"3d. That under the provisions of the sixth section of the act of 21st February, 1870, the status of the property in controversy at the time the Board of Liquidation of the City Debt was established [act 133 of 1880], was that of property "*expressly dedicated to public use;*" and that, from the character, location and manner of acquisition of said property, the said dedication was within the scope of legislative authority.

"4th. That, irrespective of the acts of 1869 and 1870, it is probable that said property, by its location, ownership, actual destination and use, was dedicated to public use, so to remain until the city authorities, under legislative sanction, should withdraw it from such use.

"5th. That the two decisions rendered by the Supreme Court, on May 4th, 1874, in the two cases between the New Orleans, Mobile and Chattanooga Railroad Company, as plaintiff, and the city of New Orleans, as defendant, each involving the validity of the grants of 1869 and 1870, are to be taken and construed together, and, as so construed, constitute *res adjudicata* between the parties as to the validity of said grants.

"6th. That as, by said decrees, the railroad company was given an injunction against the city as to said property, and as the city, although asking therefor, was denied such injunction, the thing adjudged between the parties appears to be, that the legislative grants of 1869 and 1870, in favor of the plaintiff company, were valid grants, within the scope of legislative authority, and that the company should be undisturbed by the city in the use and occupancy of the property covered by the grants.

"7th. That the suit covered by the compromise, and now on the docket of the Supreme Court of the United States, being one brought by the company solely for an injunction to prevent trespass *vi et armis*, and for damages, was a suit that the city

of New Orleans had a right to compromise, irrespective of the title to the property used and occupied by the plaintiff company.

"8th. That, irrespective of the validity of the legislative grants of 1869 and 1870, and irrespective of the question whether or not the property covered by the grants and in controversy was property dedicated to public use, the Board of Liquidation of the City Debt, created by the act of 1880, is without right to attack the compromise in question, because the city of New Orleans has never turned over and transferred to the board the said property; and because, as the evidence shows, the said act of 1880 has never been accepted by any creditor, no bond has ever been issued under it, and therefore the said act, at best, created a mere naked trust, leaving the real title and ownership of the property in the city, and leaving the board without any real interest therein.

"9th. That the value of the property in 1869, or now, or the propriety of the compromise as made, can cut no figure in the present case, as the power on the part of the city council, in regard to making the compromise or the terms thereof, is not controllable by the court, and the complainant is without standing or interest to impeach the council's action.

"10th. The complainant's bill should be dismissed with costs."

ARGUMENT.

The board claims to have been created by act of the legislature, No. 133 of 1880, and to have been invested under said act and act No. 58 of 1882 with power to control and dispose of all property of the city of New Orleans not donated to public use. The act of 1880 was practically inoperative. It proposed a partial reduction or compromise of the city debt, which was never accepted by any creditor, and not a single bond was ever issued. None of the rights or property involved in this suit were ever conveyed to the said board, and no attempt has been made to establish any such conveyance. The Board was similar to the

Commissioners of the Consolidated Debt, created by section 37 of act No. 71 of 1852, or Board of Liquidators provided, in first section of act No. 203 of 1850—convenient adjuncts or arms of the city government. The power of the city to deal with its affairs was not destroyed, and it has continued in the full exercise of its power as if no such act had been passed. This is apparent from the ordinances regularly and constantly adopted since, in which rights and privileges are granted by the city to various railroad companies, and under which leases and sales have been made precisely in the same manner as prior to this act of 1880.

The several ordinances of the city, to be found in the record, show that the city exercises this power almost daily, and its exercise has never been questioned by the Board of Liquidation or any person in Louisiana. See conveyance to Morgan R. R. Co., the N. O. P. Railway Co., the Louisville and Nashville R. R. Co., the Elevator Co. and others; Brown vs. Duplessis, 14 A. 842; 34 A. 462.

This power is universally recognized here since the act of 1880, as well as before. Harrison vs. N. O. Pacific Railway Co., 34 A. 462, decided in 1882, referring to ordinance No. 6732, passed in December, 1880, granting to the New Orleans Pacific Railway Company certain rights.

In the case of Tilton vs. the City of New Orleans, not yet reported, the court say: "The charter (sections 12 and 13) provides that the city shall have power to regulate and make improvements to the streets, public squares and other public property. * * The power was perhaps better formulated in the present charter [1882, page 21], which provides that the city shall have the power to authorize the use of the streets for horse and steam railroads. The city owned the middle ground, either as public or private property, and in either contingency could have disposed of it in the way she did."

In this case the city, by the compromise, only recognizes the power of the legislature to grant a servitude or use upon cer-

tain public property in favor of a great public highway. It simply agrees to desist from a vain and fruitless contest against adverse judgments of the courts. The power of the State and the constitutionality of its acts had been fully decided in this litigation and elsewhere. The Supreme Court of Louisiana had reiterated the doctrine: "A public corporation, instituted for purposes connected with the administration of the government, may be controlled by the legislature, because such a corporation is not a contract within the purview of the constitution of the United States. In those public corporations there is in reality but one party, and the trustees or governors of the corporation are merely trustees for the public."

In McNeil vs. Hicks & Howell (lately decided), 34 A. 1093, the court say: "The doctrine was early declared by this court, that a municipal corporation may alienate or change the use or destination of public places, with the consent and by authorization of the sovereign power first obtained, whenever the public interest may require it." De Armas vs. Mayor, 5 La. 133; Mayor vs. Hopkins, 13 La. 326; Mayor vs. Leverich, Ibid. 332; 5 A. 665; 12 A. 516

The power of the State, or of a municipal corporation authorized by the State, to grant the use of a street or other property in aid of a public highway, is a mere change of destination from one public use to another. The State ex rel. N. O. Pacific Railway Co. vs. Nichols, 30 A. 987; Township of Pine Grove vs. Talcott, 19 Wallace 666.

The legislature, by act No. 81 of 1882, page 103, provided, "that hereafter, whenever the city of New Orleans, through her proper authorities, shall contract with private corporations or individuals for the sale or lease of public privileges or franchises, such as the right of way for street railroads, or for other public undertakings, within her legal power and control, the price paid for the sale or lease of public privileges or franchises shall be applied by said city in the performance of works of public improvement of a permanent character, such as paving streets, embellishing parks, etc.

"Section 2. *Be it further enacted, etc.*, That all laws or parts of laws, and especially so much of section 10 of act No. 31, acts of 1876, known as the premium bond act, and of section 5 of act No. 133, acts of 1880, as may be in conflict herewith, be and the same are hereby repealed."

In section 8 of act No. 20 of 1882 the legislature again reiterated the powers heretofore granted to the city of New Orleans, and enunciated among them, the power to authorize the use of streets for horse and steam railroads, and to regulate the same; * * * "to lay off and sell in lots or squares so much of the batture, from time to time, as may not be required for public purposes; but the rights of accretion, or to future batture, shall never be sold?"

In argument in the court below it was contended that, while the law was operative as to the future, it did not apply where streets were already laid out. Such a restrictive interpretation cannot be maintained; and, besides, the property involved herein is shown to be still devoted to public use. Testimony of Conrey, Pilie and Bell; admission in record of suit No. 3962, page —, and as stated in opinion of the court, page 4, ante, and as specially asserted by the city in its—a solemn judicial declaration that the property was devoted to full use—a *locus publicus*.

Thus, no matter what may be the character of the rights or claims of the city involved in the dismissal of its own appeal, the power to consent to such dismissal was complete. The reports of cases in the State courts, from this court, are full of instances of the exercise of power over all of the litigation in which it has been and is involved, and the Board of Liquidation has stood by and made no objection to this exercise of power. Property of the city similar to that involved in this suit has been seized for debt, and we are not aware of any intervention by the board, claiming that it cannot be seized because it has been transferred to it. We have only to refer to the records of this court to find that the city has objected to such seizure be-

cause the property was public and not subject to seizure. The Board of Liquidation does not intervene or make any claims. (Hart vs. City of New Orleans, now pending.) No 616

The evidence shows that act No. 133 of 1880 was inoperative, because creditors of the city would not accept the terms of reduction proposed by the act, which was one-half of the "face value of the old obligation, with interest accrued thereon." No new bonds were issued—not a dollar. It was found immediately that not a single creditor would accept the terms proposed, by which one-half of the debt was to be repudiated. There was no transfer made of a single foot of land. The board neither demanded nor received any title. It offers none in evidence here. Mr. Oglesby, president of the board, gives as a reason for this that if it had taken any title from the city it would have been seized by judgment creditors of the city. That is, he means, we suppose, that while the title remained in the city it was protected as property dedicated to public use. Real estate in Louisiana is only conveyed by written title. The city and the board alike appreciated that the act of 1880 was inoperative as a conveyance of any title, both because it was not accepted by creditors, and because it was never intended to deprive the city of the control of such rights and privileges as are involved in this controversy. The city continued, as it had before, in the disposition of rights, privileges, leases and ground rents, as shown by the ordinances offered in evidence and by the testimony of the witnesses. All titles were executed and all grants were made by the city. In a case like that of the grant by the city to the St. Charles Street Railroad Company, it paid over to the Board of Liquidation a portion of the money received and retained about twenty thousand dollars for its own general uses. It was never suggested that the power to grant the rights therein disposed of could emanate from the Board of Liquidation or from any source except the city or State.

The Board of Liquidation is only a part of the machinery of

the city government, as a committee of the council charged with special duties would be. If received from the city, and not directly from the taxpayer, certain taxes to be applied to purposes mentioned in act No. 68 of 1882. The municipal power of the city would be paralyzed if the pretensions of complainants should be maintained.

In act No. 20 of 1882, approved on the 23d day of June, 1882, the city is declared to have full power and control over all such property as is involved in this suit; and is authorized to "lay off and sell in squares so much of the batture, from time to time, as may not be required for public purposes;" and is given "the power to authorize the use of the streets for horse and steam railroads;" and repeals all laws inconsistent with or contrary thereto. Act No. 81, approved July 5th, 1882, declares how proceeds from "the sale or lease of public privileges or franchises, such as the right of way for street railroads or other public undertakings," shall be applied, and specially repeals all laws in conflict therewith, and particularly section 10 of act of 1876 and section 5 of act of 1880.

How can it be claimed that act No. 58 of the same session, coming between acts 20 and 81, repeals any portion of said acts? Certainly there is no language used purporting to make any repeal, nor to divest the city of the power given under its charter. Act No 68, section 6, shows that act No. 58 was an experiment, if it failed, as act No. 133 of 1880 had, by creditors refusing to accept them, No. 68 was to be operative.

This case of the City of New Orleans vs. the New Orleans, Mobile and Texas Railroad Company stood upon the docket of the Supreme Court from October, 1878, and the Board of Liquidation entered no appearance there, and made no claim to be the real party in interest. But if the Board of Liquidation claims title to the rights or property involved in this suit, from what source is the claim derived?—from the legislature, under the act of 1880? *If the legislature had power over the subject, it had exercised that power in favor of defendants under the acts of*

1868, 1869 and 1870. We claim under prior grants. We are before the court with all the rights the State and city can give; and complainants do not pretend to have any title except as derived from them. They cannot deny the power of the legislature, and at the same time claim under it. This seems to be a complete and perfect answer, without further discussion of the subject. These acts of the legislature and the principles involved in all of them have been declared to be constitutional by the Supreme Court of this State, and act No. 67 of 1869 is specially so declared to be by the Supreme Court of the United States. City of New Orleans vs. The N. O., M. and T. R. R. Co, 27 A. 414; Ellerman vs. The N. O., M. and T. R. R. Co., 105 U. S. 166. Decisions rendered by our own Supreme Court since the above case was decided in May, 1874, have confirmed the doctrines therein defined. Police Jury vs. Foulhouse, 30 A. 67; Police Jury vs. McCormack, 32 A. 625; Tilton vs. City of New Orleans, now pending on rehearing. This last case was an action in reference to the neutral ground on Canal street, belonging to the city, upon which the tracks of the city railroad are laid. The court said:

"Far from establishing that the city has changed its destination by destroying or affecting its public character, and converting it to private conveniences, the proof is that the city has, by its administrators, employed this common property for the greater good of the whole community. R. C. C. 458. The city, it is of public notoriety, has, for upwards of twenty years, expressly permitted the use of this neutral ground for street car purposes, for the greater advantage of citizens traveling in different directions, not only without a murmur from any one, but to the entire satisfaction of all. The city had authority to do so. It is well settled by law and precedents that the city has a supervision and control over all streets, public places and other public property within her limits, and may regulate the use thereof.

"In 1859 the question was presented to this court, whether the city had the power to sell the right of way for the establish-

ment of a railroad through its streets, and it was determined in the affirmative, in a well considered and elaborate opinion, which was since followed. Brown vs. Duplesis, 14 A. 842; Board vs. City, 32 A. 915.

"In the late case of Harrison, 34 A. 362, the present court had occasion to review a similar or identical question. Supported by many authorities, from which copious extracts are embodied in the opinion, the court held that the doctrine is well settled that the legislature can delegate to a municipal corporation the power of authorizing the construction of a railroad on a street of the city, as effectually as if the power and right had been conferred directly to the State herself.

"In 1876, when the first ordinance was passed granting permission to the defendant company to build a track and to establish a stand for the lake cars on Canal street, between Baronne and Carondelet streets, the city had the right to make concessions. Her authority for so doing was the provision of the code, the statute book and her charter. The code provisions are, that common property is that to the use of which all the inhabitants of a city or other place, or even strangers, are entitled in common—such as streets, public walks; and that common property, though it belongs to the corporation, and be not for the common use, may be employed for their advantage by the municipal administrators. R. C. C. 458. The statutory pro vision is that 'no railroad, plank road or canal shall be constructed through the streets of any incorporated city or town without the consent of the municipal council thereof.' R. S. 689. The charter (sections 12 and 13) provides that the city council shall have the power to regulate and make improvements to the streets, public squares and other public property; and to regulate the proper government of carts, carriages, omnibus and all other vehicles of every description, freight, locomotive, passenger and street cars, which run in the streets and within the limits of the city. The power was perhaps better formulated in the present charter (1882, page 21), which provides that the

city shall have the power to authorize the use of the streets for horse and steam railroads. *The city owned the middle ground, either as public or private property, and in either contingency could have disposed of it in the way she did.*" [Italics ours.]

The argument of complainant that, while the above section of act No. 20 of 1882 gives the city the power to lay off and sell squares, it does not embrace the power to sell squares or portions of the batture already laid out, will not, we think, be seriously insisted upon. The power is given to lay off, and the power is given to sell when not required for public use. The city acts under the special authorization of the legislature. The power of the legislature has been universally recognized; and the relations between the State and the city as a mandatory of the sovereign authority involves no contract. Layton vs. New Orleans, 12 A. 515; 5 A. 665; 24 A. 57; 100 U. S. 514; 105 U. S. 600; 2 Dillon on Municipal Corporations, sec. 67, 3d ed; 31 N. Y. 164; 27 A. 414; 90 A. 67; 33 A. 562. In this case the right given is full and complete.

But the next argument is, that although the legislature, in 1868, 1869 and 1870, had granted the railroad company the right to run through the streets and locate its depot on a portion of the batture, and the city acquiesced in these grants by the compromise and dismissal of its appeal in October, 1882, the complainant acquired, from a succeeding legislature, under the act of 1880, the right of such property as may not be required for public use; and that the city, by the resolution adopted June 16, 1880, directing the Commissioners of the Consolidated Debt to deliver the books ,papers and property in their possession, and the delivery of such books, papers and cash, which was all the property it ever had [testimony of Wolff, secretary of the board, pages — and —], was divested of the power to acquiesce in the prior grants of right of servitude made by the State, and of the right to abandon an appeal from a judgment of the court recognizing these grants. The ordinance that created the Commissioners of the Consolidated

Debt shows that they never held title to any property, and practically were only used as a clerical body to keep a record of the city debt.

There was no divestiture of power to deal with matters involved in this suit—both because the acts of the legislature are constitutional, and have been so declared by the Supreme Court of Louisiana, and these will not be declared invalid by the federal courts [Watson vs. Mexico, 8 Peters 108; 7 Wallace 324]; and because the city has not been stripped of the power to compromise—to acquiesce in a judgment and dismiss its appeal; and, we may add, as another reason, because the act of 1880, under which the claim is made, never purported to transfer any property whatever, but merely declared a duty which would devolve upon the city authorities to enable it to liquidate its debt, if its creditors would accept; but they would not accept. The act of the legislature, section 6 of No. 31 of 1870, declares that this property shall forever be open for public use and defines the grant made herein as a public use. If the act could have been carried out then, there is the limitation excluding all property dedicated to public use. The property is in fact dedicated to public use, and the destination given by the acts of the legislature is itself a public use. Klein vs. New Orleans, 99 U. S. 150; 7 A. 148; 13 A. 842; 1 A. 128; Gould vs. Hudson R. R., 2 Selden 522; 30 A. 987.

The testimony of the witnesses Pilie, Conrey and Jesse K. Bell, show that all the space of ground between Canal, Delta and Poydras streets and the river is dedicated to public use, and absolutely essential for commerce, as being the chief landing place of the boats bringing in cotton and western produce; and this public use is not interfered with by the railroad tracks on the surface of the street and the small part of the batture used. Mr. Harahan shows that no part of the ground which the railroad company was authorized to use has been enclosed or occupied with any building, except square known as 27 A, between Notre Dame, Water, Girod and Peters streets, used

for a freight depot; and all of the other parts are open and used for commerce. So that, if the theory of complainant was correct, the controversy would be limited to the question whether the legislature had the power to recognize the authority of the State to grant to the railroad company the right to place its tracks upon the streets and levee, as a servitude upon them in favor of the railroad company, as specified in said act; and, further, whether the city had the power to grant such use of the streets and levee as is indicated in the various ordinances adopted from 1867 until 1882. This and contiguous land was filled up by the railroad company at its own expense, and part of it was under water. Testimony of E. E. Godden.

There is some testimony in the record as to what would be the value of all the property on the levee between Canal and Calliope streets; but such testimony has no more pertinence to this case than to ask the value of the St. Charles Hotel or to ask what the whole river front would sell for if susceptible of sale. There is other evidence showing that the property in this locality is of comparatively small value, and derives its chief value from competition by different railroad companies. Deslonde, page 154. There is also testimony as to an offer made by Morgan to give fifty-four thousand dollars for all the batture and ferry privileges in front of and including 27 A, as indicated by letter of Charles Morgan, July 30th, 1870 (page 364), and by ordinance No. 1492, July 16th, 1839 (page 367 of record 17); and from Williams an offer for the same rights, privileges and property; that there was much competition between the two railroads to secure the river front, ferry privileges, etc. But we do not think that these matters are involved here. What has been done in this case has been simply to settle a lawsuit in which judgment had been rendered against the city by the Supreme Court of the State and by the Circuit Court of the United States; and this lawsuit, neither in its inception nor in its close, involved any title to be acquired by the railroad, and its settlement was an acquiesence in the judgment of the

court declaring the previous judgment of the State court *res adjudicata*. Judge Pardee states the character of the controversy in his opinion, page 22 of this brief.

There is not the slightest suggestion that the action of the city council was not taken after full consideration, and that the compromise was not fairly made. On the 1st of August, 1882, a motion was made in the city council to appoint a committee, of which the city attorney should be a member, to see if a settlement could be made; and an ordinance was adopted accordingly on that day appointing a committee (record, pages —, —). More than two months afterwards—on the 11th of October—ordinance No. 7089 was adopted, and the agreement for dismissal of appeal was made. The opinion of the city attorney (pages — to — of record) shows the grounds upon which he advised the compromise; that he felt assured that the questions involved had been settled adversely to the city, and that these decisions would be maintained. He is sustained in this view by the district and circuit court judges delivering separate opinions at different times. The case has been upon the docket since 1878; it had been twice continued upon application by the city, and its power to deal with the case had never been questioned. Similar power is exercised every day in the courts of this State. And now, under these circumstances, the Board of Liquidation asks this court to declare that the city had no power to consent to dismiss its appeal and acquiesce in the judgment rendered; and asserts that the agreement made should be set aside, not wholly, but so far as it affects certain enumerated portions of ground, which it alleges are not subject to public use, and over which it is alleged that the State could not exercise the power indicated in the acts of the legislature of 1868, 1869 and 1870. The board claims this right under certain acts of the legislature of 1880 and 1882. The statement of the case seems to carry an adverse answer.

The answer of the city is, that it passed the ordinance and made the agreement for dismissal of the appeal in the proper

exercise of its power, but submits the question of its power to the court, and if it shall decide that it had not such power, it desires to return the money to the railroad company. We join in the declaration that the power of the city was ample, and insist upon the fulfilment of the agreement, and ask that the litigation may end. We allege that this new party has no right to arrest this termination of a law suit, and its application to be substituted for the city should be dismissed.

We think we have shown—

That the Supreme Court of the State has definitely affirmed the decree of the Eighth District Court for the parish of Orleans upon pleadings and the reconventional demand of the city. And all of the questions involved in the case of the New Orleans, Mobile and Texas Railroad Company vs. the City of New Orleans, No. 7972 of the Circuit Court of the United States, were definitely settled; and the decision of the Circuit Court of the United States, declaring said judgment as *res adjudicata*, was correct and is sustained by the law and the facts in this case.

That the case No. 4 of the Eighth District Court, and No. 3701 of the Supreme Court, was merely an injunction to prevent the city of New Orleans from adopting an ordinance (No. 1492 of 1870), proposed through Mr. Morgan, to confirm to him rights claimed as falling to him under his purchase of the New Orleans, Opelousas and Western Railroad.

That when Morgan removed his branch of the case to the United States Court [recordNo. 11, page 385], there was nothing left between the New Orleans, Mobile and Texas Railroad Company except its injunction and the answer of general denial of the city [record, page 383]. The court therefore reversed its judgment on rehearing, and declared: "*As the city has made no claim against the plaintiffs, our former decree was erroneous, in granting a demand in reconvention and inhibiting the plaintiffs from occupying the property.*" [26 A. 479.] All it could do was to dissolve the injunction: and accordingiy ordered, "that our former decree be set aside; and it is now ordered that the

judgment appealed from be reversed, and that there be judgment in favor of defendants, dissolving the injunction herein, and dismissing plaintiffs' suit, with costs in both courts, without prejudice to the rights of parties under the laws of expropriation." The court say in substance that there is no pleading; no claim by the city of any rights; no issue, except the question of the right of the railroad company to enjoin the city council from passing an ordinance. We therefore dissolve the injunction without prejudice. We mean thereby to say that we do not in this case decide anything not before us. The words without prejudice are merely words of reservation, and such words exclude any plea of *res adjudicata*. Durant vs. Essex Co., 7 Wallace 107; Bigelow on Estoppel, third edition, page 35.

The record (page 383) shows that the answer filed by the city in this case, No. 4 of District Court, No. 3701 of the Supreme Court, is embraced in three lines, and merely "denies all and singular the allegations in said petition contained, except so far as may be hereinafter admitted." The agreement following (same page, 383), shows that the city was to be allowed to file a supplemental answer, if necessary, but the removal by Morgan of his branch of the case, in which there was an answer by the city and reconventional demand claiming title, to the United States Circuit Court, dispensed with this and only left in controversy the maintenance or dissolution of the injunction between these two parties. The principal controversy in this case was with Charles Morgan, as shown by his petition, page 358, and answer and claim of title in reconvention of the city of New Orleans, pages 376 to 383. The agreement between Charles Morgan and the city (page 385) shows the withdrawal of the issues made in the controversy between them, and thus the case was stripped of all questions pertaining to the title of the property, and was limited by the Supreme Court of Louisiana, as above stated.

We have further shown that the Board of Liquidation is

merely a part of the city government, claiming to derive its authority from act No. 133 of 1880 and No. 58 of 1882; that if the legislature had power over the matters involved, it had disposed of them in favor of the railroad company by previous acts ten years before; that acts Nos. 20 and 81 of 1882 declare that the city of New Orleans has full power over the subject, and the ordinances offered show that it continuously exercised that power without objection from the Board of Liquidation.

We have further shown that the Board of Liquidation has no interest in nor power over the rights and privileges embraced in the compromise between the city and the railroad company:

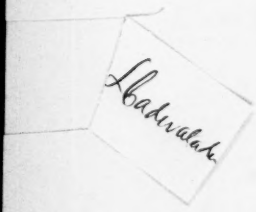
1st. Because the board does not even claim to have any authority over any property used by the public and dedicated to public use; and the portions of ground claimed are devoted to public use; and the legislature has indicated such destination, and the city has assented thereto.

2d. The Board of Liquidation cannot interfere with the exercise of legislative discretion granted to the city by the State; and the State has exercised its power over the matters involved in this suit directly in favor of the railroad company, and the city has confirmed the acts of the State.

We respectfully ask that the application made by the Board of Liquidation to be substituted for the city of New Orleans, as appellant, in the case of the City of New Orleans vs. the New Orleans, Mobile and Texas Railroad Company, and to set aside the agreement made by the Louisville and Nashville and the New Orleans, Mobile and Texas Railroad Company, on the 11th of October, 1882, be rejected and dismissed; that the decree rendered in this case may be affirmed.

THOS. L. BAYNE & DENEGRE,

Solicitors for the L. and N. and the N. O., M. and T. R. R. Companies, Appellees.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Supreme Court of the United States.

No. 997.

BOARD OF LIQUIDATION

vs.

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY ET ALS.

I respectfully add a few words in reference to this case as it presents itself to me.

The case stands practically on the motion of the Board of Liquidation to set aside the settlement of a law suit which involved an injunction against trespass, and the dismissal of the appeal by a stipulation signed by all the parties to the record. As stated by the Court, the appellees are entitled to the dismissal, unless the parties have lost the capacity to act, and the party proposing to intervene has acquired full power over the subject-matter.

Agreement was made by the city to dismiss its appeal, the Board of Liquidation first asserted its rights to the money paid, and the affidavit of Colonel Palfrey, the acting president, that this is in contemplation still, (p. 197.) This action shows that the Board had not previously asserted *title* to real estate, and was its own interpretation of its powers. It had taken no steps to have any conveyance made to it. Mr.

Oglesby (p. 78) gives as one reason for this that he was afraid that creditors might seize it.

The record shows that the city has continued to act in all similar matters, and that the Board of Liquidation has remained perfectly passive, and has not asserted any right to obstruct the city government. It has thus interpreted its own powers or rather want of power. When the act No. 133 of 1880 proposed to issue bonds to retire and cancel the city debt at about fifty cents on the dollar, the creditors refused to accept the terms—no bonds were ever issued and the Board claimed no title to any real estate, and the city conveyed none. The act was in terms only directory to the city, and was based upon authority granted to cancel and retire the city debt on the terms and for the purpose named—the duty ceased when the act failed, and was so recognized by subsequent legislation and by proceedings of the City Council relative to its debt, (p. 142, 158, 137.)

Act No. 20 of June, 1882, section 8, p. 139, shows that the batture was distinctly within the control of the city to lay it off and dispose of it.

Act No. 58 of 1882, (p. 120,) provided another mode of settlement of the city debt, and directed the levy of a tax, which was and is entirely adequate for that purpose, and section 13 repealed acts in confiict. Act No. 68 of 1882 (p. 143) provided still another mode in case the creditors should refuse to accept the settlement under act No. 58 of 1882 as they had No. 133 of 1880, and this is recited in the act. (See also section 2 of act 81 of 1882, p. 138.)

In neither of these acts of 1882 is there the slightest reference to any real estate or to any obligation on the part of the city as to any conveyance of it; but, on the contrary, in

act No. 20, of 1822, the city is specifically authorized to deal with the batture, and the authority over this subject is recognized as properly coming from the Legislature of the State, as it had always been recognized in previous legislation. This act formally repeals all previous acts conflicting with it. The question in the present case does not involve a question of title. The action commenced with an injunction to restrain city employees from committing a trespass upon its fences, buildings, &c., and a claim against the city for damages, alleging that the judgment of the supreme court of La. of May, 1874, No. 3692,(pet. in rec. No. 7, 26 an., 517,) had decided certain matters in their favor, and constituted *res adjudicata.* The United States circuit court determined that the allegation was true, that such a decision had been rendered by the highest court of the State, and constituted *res adjudicata.* The city appealed in 1878, and four years afterwards, in 1882, dismissed its appeal. It is this act of the city which the Board of Liquidation claims was beyond its power. The court continues the motion to dismiss the appeal, to enable it, if possible, to establish that the city had lost control over its own appeal from such a judgment as we have described, and that it had acquired all control. Judge Pardee, of the circuit court, denies both propositions. The burden of proof is upon the Board to set aside the settlement of this lawsuit between the parties to it, and it has failed.

Le decree 113.

In any aspect in which the case can be considered it would seem that the power of the city was complete over it. It was in fact an injunction to prevent trespass and recover damages. The injunction was maintained, and the court declared that a former judgment of the supreme court of

Louisiana constituted *res adjudicata* between the parties; and it was the appeal from this judgment which we asked to be dismissed under stipulation of the parties.

Certainly the city was and is competent to dismiss its appeal. Again, if the act of October, 1880, had been effectual to give the Board control of property not dedicated to public use, it seems clear that the batture or levee did not come within the terms of the grant, (for all property dedicated to public use was excepted,) and if it had, it would be subordinate to the servitude in favor of the railroad company, granted by the Legislature of the State in 1869 and 1870. The Civil Code of Louisiana describes what such servitudes are, and they are recognized between the same parties in the case of City of New Orleans *vs.* N. O., M. and T. R. R. Co., 27 Ann. Reports, p. 414, and in the case of Ellerman *vs.* New Orleans, Mobile and Texas Railroad Company, 105 United States, p. 166. The acts of the Legislature did not purport to convey any title to the railroad company, but merely imposed a servitude upon public property for a public use. But, as stated in the beginning, we do not think that any of these questions which have been passed upon by the supreme court of Louisiana are involved in the application now made by the Board of Liquidation. We have no occasion to discuss whether these decisions were correctly made or not. The Court certainly is not called upon here to review them. As stated by the city attorney, the city has allowed nine years to elapse and has taken no appeal nor writ of error. The circuit court of the United States has merely decided that such a decision has been rendered; and the city of New Orleans

now comes before this Court and admits that this is true, and acquiesces in the fact found by the court.

When or how has the capacity to make this acknowledgment been taken away from the city? It took an appeal, claiming that there was error in the judgment, and now comes forward and admits that there was not. If the city has not deen deprived of power to do this, then this litigation is ended, because there is no suggestion of any right on the part of the Board of Liquidation to intervene in this suit between the city of New Orleans and the railroad company, except upon the denial of the authority to act, and the allegation that all authority over the subject-matter is vested in the Board.

In the briefs submitted the whole case is discussed more at length, but I have felt that this statement of the controversy would dispose of it and maintain the judgment of the circuit court.

JOHN L. CADWALADER,
For Appellees.